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MANDATES, DEPENDENCIES AND TRUSTEESHIP

By

H. DUNCAN HALL

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FOREWORD

Part I of the present monograph was issued in 1945 in mimeographed form for the use of a restricted circle of interested persons in connection with the United Nations Conference at San Francisco. The completed study is now published as number nine of the series of Studies in the Administration of International Law and Organization sponsored by the Division of International Law of the Carnegie Endowment for International Peace.

The author, a distinguished Australian scholar, served for many years in responsible positions in the League of Nations Secretariat and gained insight into the inner working of the great experiment in trusteeship over dependent areas carried out by the League.

In keeping with a well-established tradition of allowing authors full liberty in appraising facts and expressing views as long as this is done in a truly scientific and constructive spirit, no attempt has been made to limit the free expression of the author's viewpoints. The Endowment is not, however, to be identified with any opinions expressed in this stimulating study.

Annexed to the text is an important collection of documentary material which the reader will find particularly helpful in his study of the character, limitations, and advantages of the mandate system as defined in Article 22 of the League Covenant, and in relation to the important problem of trusteeship under the United Nations.

GEORGE A. FINCH

Director of the Division of International Law

WASHINGTON, D. C.

December 31, 1947

PREFACE

A small segment of the great wheel of international affairs is studied here in some detail. Intensive studies of small fields are always liable to lose their sense of proportion. The fly, in Bacon's essay, "sat upon the axle-tree of the chariot wheel, and said, 'what a dust do I raise.'"

International trusteeship has a certain intrinsic importance. But that can be overemphasized, and has sometimes in the past been exaggerated and distorted. A great deal of its significance lies not in trusteeship as such but in its relationship to, and in the light it throws upon, the political axis on which the whole wheel turns. The political axis of mandates and trusteeship is discussed briefly in the introductory chapter (the detailed evidence on which that summary is based will be given in a study of international trusteeship now in preparation). Trusteeship is studied in this chapter as a phenomenon of the international frontier in relation to the working of the state system and the balance of power. The chapter is made the introduction because it is the broad conclusion that emerges from the study. This is the main historical taproot of mandates. The other important historical roots are traced in Chapter VIII.

Neglect of the political taproot of mandates and trusteeship is not the only factor making for exaggeration and illusion. Another is failure to view them against the background of national trusteeship and of dependencies in general, of which they form only a small part. A general view of mandates against this wider background is given in Part I, which was circulated by the Carnegie Endowment at the San Francisco Conference of the United Nations in April, 1945. The text of Part I has not been changed except for a few drafting changes and the addition of one or two paragraphs.

Now that history repeats itself in the trusteeship system of the United Nations, an understanding of the main historical roots of both mandates and trusteeship is more important than it was when the mandate system was a going concern. The longer perspective, and the vantage ground of a Second World War and second world organization, have made essential a historical revision both of the premmandate basis and of the setting-up of the system. Part II of the study deals with the premmandate

basis, the first World War, and the Paris Peace Conference. This is followed by a full account of the transition from the Covenant to the mandate system, with its many close parallels to the transition between the United Nations Charter and the trusteeship system. Full use is made of the important new historical material which has just been made available by the United States Department of State, in its *Foreign Relations* series, on the peacemaking of 1918-20.

Part III is devoted to a detailed examination of the working of the League mandate system. Though illustrations are drawn from the different territories, the book is in no sense a history of each of the fourteen territories. Such histories, so far as it has been possible to consult them, are referred to in some cases in the footnotes and in the bibliography. The mandate system is studied in Part III in its wider contexts. Thus, mandates in Africa are examined in relation both to League universality and to the regional conception and treatment of tropical Africa as embodied in the Congo Basin treaties.

The winding-up of the mandate system and of the League and the transition to United Nations trusteeship, are dealt with in Part IV.

The book has been written amidst the pressure of other duties. Its judgments are the author's. So are its faults and defects; but these would have been greater but for the help of friends and colleagues in supplying information and reading the manuscript. My thanks are due to Professor W. N. Medlicott, who supplied me with illustrations of the working of the international frontier; to former colleagues in the League of Nations Secretariat: Dr. Benjamin Gerig, with whom many points were discussed, and to Dr. Ranshofen-Wertheimer and Mr. V. Pastuhov (who have contributed books in this series). Mr. Peter Anker let me draw freely upon his expert knowledge and read a number of chapters, and Mr. Wilfrid Benson read the section on the ILO. Dr. Victor Hoo, Assistant Secretary General for the Department of Trusteeship and Non-Self-Governing Territories, has placed facilities and documents at my disposal. The book owes much also to information given freely by officials working in the field of international trusteeship and colonial problems in Washington and London—American, Australian, South African, and British—as well as to the reading by some of them of parts of the manuscript. My debt to other writers, and especially to Professor Quincy Wright, is apparent from the footnotes. The staff of the Carnegie Endowment has given me throughout invaluable aid in the preparation of the manuscript. I wish also to express my apprecia-

tion of the helpful advice given me by Mr. S. Whittemore Boggs, Special Adviser on Geography of the Department of State, in the preparation of the map of the international frontier.

Chapter I of this study appeared in a slightly different form as an article in the *American Journal of International Law*, January, 1948. An article on "International Trusteeship," and two Notes on "Mandates and Belligerency" and on "South-West Africa," in the *British Year Book of International Law* for 1947, have drawn to some extent on material in the book.

At the time of his death in London during the latter part of the war, Lord Lugard was busy on a study of mandates for the Royal Institute of International Affairs. His notes, written in his incredibly small and neat handwriting, were forwarded to me for use in the writing of this book. Wherever use has been made of them they are referred to as Lugard Manuscript. I am much indebted to his executor, Major E. J. Lugard, and through the good offices of Miss Margery Perham to whom the papers were entrusted, for the privilege of using them.

This book was completed before the tension between the U.S.S.R. and the western powers came to a head in the spring of 1948. During that spring the grinding together of the "mighty opposites," sometimes intensified by local friction, along the zones of the international frontier produced a whole series of new fissures which throw light on the historical processes at work on that frontier. They illustrate the weakness of the characteristic arrangements, national or international—such as buffer state, or international regime—whose purpose has been to secure some stability in these perilous zones. The concept of neutrality reappeared in Scandinavia in the Soviet-Finnish treaty of April 6, and a declaration made by the Foreign Minister of Sweden. There was an ominous widening of the fissures in Germany threatening its partition. The new international regime in Trieste collapsed in the struggle between East and West over Italy. The mandate over Palestine foundered in a minor war threatening graver complications. The international frontier divided Korea. What was to emerge from this grinding process—whether new growth of international compromises, or the blighting of the old crop—could not be foreseen.

H. DUNCAN HALL

Washington, D. C.

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INTRODUCTION

CHAPTER I

THE INTERNATIONAL FRONTIER

I. THE NATURE OF THE INTERNATIONAL FRONTIER

The international frontier is formed by the zones where great-power interests come together in conflict. It is the main line of structural weakness in the earth's political crust—the main fissure where wars break through. The powers are constantly at work on the frontier trying to patch up the peace by international arrangements of various kinds.

The conception of the international frontier cannot be stated in a sentence. It will emerge from the analysis that follows. But broadly speaking, it is the zone in which the great powers, expanding along their main lines of communication to the limits of their political and economic influence and defense needs, impinge upon each other in conflict or compromise. It is the debatable no man's land into which the interests and policies of more than one great power penetrate, in which they compete for power and influence but in which no one power is supreme. For once a great power becomes supreme in an area, even if it is not fully "sovereign" from a legal point of view, that area can hardly be said to fall within the zone of the international frontier. Thus American power and diplomacy as expressed in the Monroe Doctrine (with British support) removed the Latin American continent from the international frontier. So likewise the subcontinent of India, with its congeries of peoples and states, was removed for a century and a half from the international frontier by British power, and given also peace between its races and life for its minorities. Historically the international frontier began to emerge in the sixteenth and seventeenth centuries. It grew with the extension to the New World and South and East Asia of the rivalries of the then major continental powers, Spain and Portugal, Britain, France, and Holland, and the gradual convergence of the contemporary Russian landwise expansion.

The relation between the ordinary national frontier and the international frontier is not easy to define. A national frontier of a great power may coincide in part with a sector of the international frontier. But in

general the international frontier is a zone that lies beyond the national frontiers and does not necessarily touch them at any point. When Mr. Stanley Baldwin, before the House of Commons in 1934, spoke of the Rhine as "where our frontier lies today," or when General Carl Spaatz spoke of an American "Arctic frontier," the reference was to the international frontier.¹

It has long been recognized that the expanding national frontier in the case of certain states such as the United States has exercised a major influence on the national life—political, economic, and cultural. The international frontier has exercised a no less profound influence in modern history on the relations of the states and peoples of the world. It has been a major factor in the development and shaping of international arrangements and institutions.

The international disputes that have come before the League of Nations or its successor have flared up mostly at points along the international frontier. Most of the main crises and eruptions of world politics in modern history have been linked with that frontier. As a volcano is a local vent for widespread pressures in molten depths of the earth's crust, so an outbreak on the international frontier, in some so-called frontier incident, is rarely a local phenomenon but can be traced back to pressures deep down within the states concerned.

A zone of conflict between the great powers forces them to compromise. The international frontier is thus not only an area of international conflict; it has also produced—as will be seen below—nearly all the international territorial regimes in modern history as well as many other international arrangements of various kinds. Such arrangements, which can be classified together as phenomena of the international frontier, have usually had as their objectives the preservation of the general peace, the securing of law and order in otherwise unstable areas, and of proper conditions of life for the local inhabitants, and the facilitating of normal international intercourse in matters of trade, travel, and cultural relations.

Geographical factors such as lines of communication play some part in determining the location and extent of parts of the frontier. It is mostly pure coincidence, though not without symbolical interest, that a fairly

¹ "As we fabricated this budget which we are now presenting, we had continually in mind the concept of the Arctic frontier."—General Carl Spaatz, *Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Eightieth Congress, First Session, on the Military Establishment Appropriation Bill for 1948* (Washington, 1947), p. 601.

typical list of such arrangements can be read off along the line of the Great Rift Valley. The immense unstable line of the Rift Valley runs from Lake Nyasa, past the rock walls of Abyssinia, through the Red Sea, the Gulf of Aqaba, the Dead Sea, and the Jordan Valley. Sunken valleys, deep narrow lakes and seas, mark the Rift. Flanking volcanoes—Ruwenzori and Kilimanjaro—are vents for the eruptions that accompanied the faulting along the Rift. Politically the line of the Rift System, from end to end, from Nyasaland to the Jordan Valley, is a line of typical phenomena of the international frontier: great-power rivalries and conflicting spheres of influence, mitigated by various forms of compromise arrangement. The list, reading from south to north, is as follows: the mandates (now trusteeships) of Ruanda-Urundi and Tanganyika; the Uganda Protectorate; rivalries and spheres of influence over Abyssinia; Eritrea, in turn Turkish, Egyptian, Italian, and now projected international trusteeship; rivalries of Britain and France over Egypt and the valley of the Nile culminating in the Fashoda incident; the condominium of the Sudan; the former condominiums and protectorate over Egypt; the neutralized and demilitarized Suez Canal, with its international regime; the mandates over Trans-Jordan, Palestine, and Syria; the checkered history of Alexandretta, in turn Turkish territory, League mandate, international regime, and again Turkish territory. (As we shall see, the line of phenomena of the international frontier continues historically through Anatolia, along the Straits, through the Balkans, and thence on to the Baltic and even to the Arctic.)

The international frontier is more than a geographical zone or series of zones. It is a composite of frontier zones of other kinds—political, ideological, economic, scientific, all closely interrelated. All these frontiers broadly coincide. But some are more sharply defined than others. Some are merely broad areas of movement in one general direction, like ocean currents that continue to move forward despite constant shifting and changing with wind and tide and temperature. Politically the international frontier may fluctuate with changes in the political policy of a major power which advances or contracts the area of its political activity. A major act of policy like American aid to Greece and Turkey can fuse together all aspects of the frontier: geographical, political, economic, ideological. (It was a sign of the all-pervading influence of the international frontier that when a United Nations Commission of Inquiry was sent to report upon this sector it was found to be itself divided by the frontier.)

The international frontier has played historically and still plays a highly important part in international economic relations. In greater or less degree it has been a limiting factor in the expansion of world trade and private investment. The opening-up of great new areas to freer world trade, and the continued holding-open of the door, in such frontier regions as the Levant, North and Central Africa, Southern Asia and China, became a leading factor in the relations of the powers in the hundred years that began with the Anglo-Turkish treaty of 1838. Private investment and trading on a large scale in the unstable zones of the frontier became possible in the nineteenth century only through a system of internationally recognized safeguards for foreign nationals. These safeguards have been abandoned in the main so that private foreign investment in such areas is largely a thing of the past. Under what were called sometimes capitulations, foreign courts had extraterritorial jurisdiction over nationals living and working in the country. Other expedients included leased zones, international settlements, and customs receiverships. Capitulations or other allied arrangements existed at various times in Turkey, Egypt, Tunis, Morocco, Tangier, Congo Free State, Liberia, Madagascar, Siam, China, and Japan. Uncertainty as to the legal and political status of an area, even where a single power is *de facto* supreme as in a mandated area, has proved a constant deterrent to investment and development.

In the field of science the intrusion of the international frontier is not a new phenomenon, but the intrusion was never more patent than today. The atom bomb and other discoveries have shattered the idea that "science knows no frontiers." Certain areas of science now come under the significant heading of "defense science" and are governed by regulations and understandings imposed by danger from beyond the international frontier. As if in penance for their probing of the innermost secrets of nature, wherever two or three physicists are gathered together they discuss under the inevitable shadow of the frontier.

Geographically, the international frontier is formed by the linking-up in our own time of several older frontier zones in which the interests of the powers conflicted. The principal zones of contact between the powers were Central Europe, Africa, the Mediterranean, the Near, Middle, and Far East, and a broad area through the Western Pacific from the Arctic to the Tasman Sea. These were the areas where the separate expansions of the powers (of the western European states outwards from Europe, across the oceans and landwise into Africa, from the

seventeenth century onwards, as well as the land expansions of Russia, the United States, and Japan) met and overlapped "Nos frontières marchent avec nous" was the often quoted phrase of a Russian general in the 1880's. The limit of such freely moving frontiers was reached in the twentieth century. As the American settlers moved westwards until all free land was taken up, so the expansions of the powers by land and sea reached the point where there were no more lands in the world to be had freely for the taking without war. Territorial expansion was no longer available as a means of relieving tensions or giving what was known in diplomatic language as compensation. The fusing of these separate zones into a single international frontier is the inevitable consequence of the world-wide extensions of the political, ideological, and economic range of the super-powers, as well as of the transoceanic range of modern weapons.

The international frontier is more than the geographical, political, and ideological line on which the super-powers meet. It is the line on which about the policies of all the lesser states of the world because of their relations with the super-powers.

The relations of great powers may be those of stable friendship, even to the sharing of strategic positions such as the American bases in British Atlantic islands. If Britain and America have a frontier between them on the Atlantic it has come to be of the nature of the unfortified Canadian-American border. Moreover, a long historical relationship of friction at many points of contact in various parts of the world can change into one of friendly cooperation, as happened with Britain and France from 1904 onwards.

The main geographical belt of the international frontier now runs in a vast circle round Eurasia from occupied Germany to occupied Japan—a circle completed through the Arctic. Lesser belts in western Europe and the Pacific form part of the system. It is the familiar zone of each morning's newspaper headlines. From it comes the steady visible stream of dispatches from overseas correspondents, reporting the pressures, the temperatures, and the eruptions on what is called sometimes the "perimeter." From it comes also the steady invisible stream of dispatches and intelligence to the Chanceries. Nuances of policy, variations in propaganda lines, evidence of economic booms and depressions, the condition of foreign markets and investment, major technical advances in industry, new inventions, the discovery or utilization of new resources, morale, the relations of management and labor, the state of the nation—

are all reviewed and weighed continuously in terms of the international frontier.

2. THE STATE SYSTEM, THE BALANCE OF POWER, AND MANDATES

It is not possible to examine here all the aspects and implications of the international frontier. Its history forms a large part of the history of the relations of the powers. This study will deal with a single aspect. Its theme is the persistent breaking-out along the frontier over the past hundred years, and never more impressively than today, of certain characteristic and closely related phenomena. These include neutralization and demilitarization, condominiums, international mandates and trusteeship, and other forms of international territorial regimes and arrangements. In the past such regimes have not been grouped normally with mandates and trusteeship, which have been regarded almost as an unrelated species.

That international mandates and trusteeship are largely by-products of the working of the state system of the world, of the political relations of the powers, and thus factors in the balance of power, has never been sufficiently recognized. The tendency has been to explain them historically as in the main a product of humanitarianism and of liberal idealism. But these in fact have played a secondary rather than a primary rôle.

Mandates and trusteeship, and the other varieties of the species to which they belong, have flourished in a kind of international no man's land. The characteristic of such no man's land is the absence or breakdown of sovereignty. It is an area of low political pressure into which the forces of the strong, well-organized states tend to expand and where their spheres of influence may overlap and clash. To it belong weak ungrouped and unprotected states, or states which temporarily, through civil war or other factors, have lost their power and cohesion, and thus lie open to pressures and invading forces. But in general it is the area of more or less dependent peoples as distinguished from independent peoples. For the mark of an independent people is that it has a stable internal peace and can offer sufficient opposition to such intrusions to make them difficult if not impossible.

Nearly all mandates and trusteeship areas are to be found in a few great frontier zones of overlapping interests or spheres of influence of the powers now fused together into the international frontier. But they may also arise at points of direct frontier contact between the great powers,

as in the Saar Basin. In such cases resort may be had to some compromise form of international regime such as that set up for the Saar Territory, or the Free Territory of Trieste ^{1a} under the Italian Peace Treaty of February 10, 1947

There are no mandates, no trusteeships, no dependent peoples within the well-ordered peace area of a strong, advanced national state, such as metropolitan France or Great Britain. But within the metropolitan area of a number of the states members of the United Nations, including more than one of the five great powers permanent members of the Security Council, there are internal dependent areas and depressed peoples. Though these peoples are depressed, in need of tutelage and assistance and of effective guarantees of their human rights, they are not made the subject of annual reports and petitions to any international body. Their populations are without any special international safeguards (though they do come within the general field of "human rights" of the Charter). ^{1b} No example of international trusteeship, and few if any of the other phenomena of the international frontier, are to be found in the Western Hemisphere, in which there is a single great power—the United States of America. The international frontier threatened to run through the Americas; the series of episodes whereby it was eliminated from the Western Hemisphere forms the central thread of the history of American diplomacy.

Some of the phenomena that occur in trusteeship areas are not, of course, peculiar to those areas. Thus, states defeated in war may have imposed upon them by the victorious powers, under a treaty of peace, some of the restraints or safeguards which are characteristic of a trusteeship area. Common examples are special provision for the protection of minorities, under international guarantee, and the open door. From minorities protected in this way petitions may come to an international body in much the same manner as petitions come from a mandated or trusteeship area. Also, in the case of newly created states, similar conditions may be imposed by the powers before they are prepared to grant recognition. Thus, the minority treaties of 1919 to 1923 applied to all the succession states created out of the ruins of the Austro-Hungarian Empire. Similar minority safeguards had been imposed on the states

^{1a} The proposal of the United States, the United Kingdom, and France in March, 1948, to return Trieste to Italy was rejected by the U.S.S.R. in April.

^{1b} Without specific provision for petitions in the Charter the "right" of petition has been assumed and petitions are being addressed to the Commission on Human Rights as well as to the Commission on the Status of Women.

that emerged one by one for more than a century out of the ruins of the Turkish Empire. Likewise, as a result of the same historical forces, minority protection became a feature of the mandates set up for the former Turkish areas after the first World War.

Moreover, even a great state which has fallen into a condition of prolonged internal weakness and civil war, and so become incapable of excluding, controlling, or protecting the foreign trader or traveler, may be subjected to a species of limited international tutelage. Thus, China in the nineteenth century became a semicolonial area open to intrusions from her land and sea borders, and was subjected to the "unequal treaties." These limited her tariff autonomy, made her customs revenue security for foreign loans, imposed a one-way open door, and gave foreign states jurisdiction over their own subjects in Chinese territory, with the right to establish extraterritorial zones in Chinese ports. China had temporarily lost her full sovereignty and was partly merged in the international frontier. Only in recent times have the Western powers enabled her to close at least her sea borders by giving up their special privileges.

Phenomena such as those mentioned in the last two paragraphs are not commonly associated with international mandates and trusteeship; but they are due to the same political causes as mandates and trusteeship and have elements in common with them. They all involve some kind of tutelage; they are all the result of the intrusion of outside forces, whether those of a single state or of several states, or of an international body. Greece in 1947 afforded an example of tutelage, a special form of protectorate with trusteeship features, falling short of full international trusteeship. The United States intervened at the request of the Greek Government to give aid and protection, training and supervision, thus supplementing the aid given hitherto by Great Britain. The action was taken in conformity with the Charter. It was formally notified to the United Nations, to which some kind of accounting was to be made. The possibility was held open that the United Nations itself might take over ultimately the responsibility if it desired and were able to do so. And a United Nations frontier commission was appointed as an insurance against violations of the Greek frontier. This was tutelage with some international elements but not full international trusteeship in the technical sense of the Charter.

Thus the varieties of the species shade off into one another. Spheres of interest and national trusteeship shade off into protectorates; or into various forms of condominiums. These shade off into other forms of

international regimes, like Danzig or Tangier; and these in turn shade off into mandates and the several kinds of United Nations trusteeships. For the United Nations Charter itself recognized at least four distinct varieties of trusteeship: the strategic-area type; trusteeships exercised by one state; or by several states; or by "the Organization itself." Thus the condominium, or rule of several states (rejected as unworkable by the Paris Peace Conference in 1919) crept by a back door into the Charter. This was logical enough because the condominium was a well-known alternative form of administration on the frontier when nothing better could be agreed on by the powers concerned. Under the League of Nations a single territory could pass through several phases. The Sanjak of Alexandretta, formerly part of Turkey, was first part of the mandate for Syria; then, in 1937, it was turned into a joint international regime under the League, with France and Turkey acting as League agents; and finally, in 1939, it was reabsorbed into the Turkish state.

What matters is the substance and not the form. The Saar Territory was under the Saar Governing Commission and not the Permanent Mandates Commission. Trieste is under the United Nations Security Council. And the United States' Pacific Islands "strategic area" trusteeship is under the Security Council assisted by the Trusteeship Council. But such differences are largely matters of the internal economy of the League or of the United Nations—which committee, which section of the Secretariat, has to handle the petitions, the reports, the recommendations coming in a steady stream from such territories to the League Council or to the bodies that inherited its functions, the Security Council, the Trusteeship Council, and the General Assembly of the United Nations.

Nothing, it will be noted, has been said so far of the African mandates south of the Sahara. The reason is that historically international mandates and trusteeship did not originate mainly in Africa. Their significance cannot be understood if they are studied mainly in relationship to Africa. The theory and ethics of national trusteeship developed first in relation to the vast dependency of India. International mandates of a primitive kind developed first in relation to the Mediterranean-North African-Middle East frontier zone, especially in the eastern Mediterranean and the Turkish Empire from Egypt to the Balkans. Mandates in tropical Africa were a secondary phenomenon. The idea that both historically and as a contemporary phenomenon mandates and trusteeship involve primarily Africa south of the Sahara and the Pacific Islands is a misreading of the facts. Yet the idea has gained considerable cur-

rency. Thus in a recent publication of high authority, the history of mandates becomes almost wholly an African affair; it is told in terms of the humanitarian movement, the abolition of slavery, the development of national trusteeship, colonial self-government, equality of commercial access, the Berlin-African Conference of 1884-85, and, finally, the setting-up of the League African mandates in 1919.

All this is no doubt important but it is less than half the story. By leaving out all reference to the political background of the mandate and trusteeship systems it obscures the relationship of mandates to other varieties of the species. [It fails to explain why the League mandate system was applied only to ex-enemy territory and nowhere else. It minimizes the great importance historically of the Near East mandates. It gives the wholly misleading impression that historically the "A" mandates, set up in the areas liberated by the collapse of the Turkish Empire, were special cases, outliers as it were of the central range in Africa; whereas they are in fact the main range itself, and the African mandates are the lesser ridges branching off from it. They were a further stage of the partition of Africa under a more elaborate formula. The partition of Africa, the greatest example of peaceful adjustment in the history of the international frontier, combined national trusteeship with international obligations under the Congo Basin treaties. The mandates added the principle of international accountancy. The partition was accomplished by the Concert of Europe without war, though not without friction between the powers. It was friction between France and Germany that permitted King Leopold of Belgium to slip in between them and to secure from the powers at the Berlin African Conference of 1885 the mandate to govern the area now known as the Belgian Congo.

3. THE UNITY OF THE PROBLEM OF PEACEMAKING AFTER THE WORLD WARS

This preoccupation with the African origin of mandates and international trusteeship can be traced back to a misunderstanding of what really happened at the Paris Peace Conference. General Smuts, who was widely credited with originating the idea of the League mandate system, has in a curious way been regarded as misapplying it. He suggested that it should be confined to Europe and the Middle East and not extended to Africa and the Pacific; President Wilson, however, insisted on the proper application of the system by extending it to ex-enemy territories

in Africa and the Pacific. This is an over-simplified and very misleading interpretation of what happened. The full records of the Peace Conference are now available. They show the wide influence of General Smuts' thinking on the European settlement.^{1b}

The reason General Smuts gave for limiting mandates to Europe and the Middle East was that he took mandates to mean self-determination. "The German colonies in the Pacific and Africa," he wrote, "are inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense."² These colonies should therefore, he thought, be disposed of on the basis of President Wilson's Fifth Point, which seemed clearly to envisage annexation and national trusteeship rather than an international mandate. As this passage indicated, General Smuts was thinking of mandates as a temporary system, a stepping-stone toward self-government and self-determination. It was, he said, "a temporary expedient." It was temporary for two reasons: in the first place, the communities under tutelage were to become independent states; in the second place, the appointment of "suitable Powers . . . to act as mandataries of the League in the more backward peoples and areas" was a compromise. The compromise was necessary "partly to conciliate the great Powers and partly in view of the administrative inexperience of the League at the beginning."

It was a far-reaching and statesmanlike view of the necessities imposed by the breakdown of the empires—Russia, Turkey, Austria-Hungary, and Germany—which General Smuts presented to the Peace Conference. These empires had been based on the inequality and bondage of their peoples. The chaos resulting from the collapse of the empires could be overcome only by a reconstruction based on the solid principle of nationality and self-determination rather than of subjection. He saw the League of Nations as the "successor of the Empires," the "liquidator or trustee of the bankrupt estate" of the Old World. He saw annexation replaced by what he called reversion to the League. Some states, he recognized, were sufficiently advanced and unified to become independent at once—Finland, Poland, Czechoslovakia, Yugoslavia. Others would have to pass through a period of temporary tutelage. They were hardly

^{1b} e.g., in the many traces of European mandates—in the Saar, Spitzbergen, the Baltic Provinces, Eastern Galicia, the Fiume area, Albania, and Constantinople.

² *The League of Nations; A Practical Suggestion*, by Lt. General (now Field-Marshal) the Right Honorable J. C. Smuts (London: Hodder and Stoughton, 1918). The citations in the following paragraphs are from this publication.

yet capable of statehood but would "require the guiding hand of some external authority to steady their administration." They would be self-governing but with "external assistance and control." Examples which he placed in this category were Transcaucasia, Mesopotamia, Lebanon, and Syria. (He used for this category the word "autonomies"; "protectorate" might also have served.) In other territories, such as Palestine and Armenia, the peoples were so racially divided that "the administration would have to be undertaken to a very large extent by some external authority." The external authority would in form be that of the League of Nations. But the League (at least until it was more consolidated and experienced) would have to act, he thought, through a national mandatory; since direct international territorial administration had been shown by past experience to be "paralysis tempered by intrigue."

The importance of this view was that it summed up in a single sweeping generalization all the different expedients, including mandates, necessitated by the downfall of the empires. New states shaded off by degrees of autonomy into protectorates and mandates. Minorities and mandates were seen as related aspects of a common problem. Demilitarization was needed for new states as well as mandates. This sense of the unity of the problem comes out strikingly in the picture General Smuts drew of new sovereign states and beside them—

a large number of autonomous States . . . befriended, advised, and assisted in varying degree by individual great States. A smaller number of areas will be directly administered by some or other of the Powers. Over all would be the League as a real live controlling authority, seeing that its mandates or charters are fairly carried out, that there is no oppression of small racial minorities in the larger autonomies or administrations, and that the guarantee of the open economic door and of a peaceful policy in all less developed areas gives no reason for bitterness or rivalry among the great States.³

Succession states, he thought, should be treated in the same way as mandated areas in the matter of demilitarization. The new states should possess no military forces beyond those necessary for the purposes of internal police. "In respect of all such territories the League must be responsible, directly or through the mandatory, for the maintenance of external peace." He saw that the new nation states arising in the decayed empires (whether with or without a temporary stage of tutelage), were not likely to keep the peace with each other without external restraints.

³ *Ibid.*, pp. 28-29.

"But for the active control of the League," he pointed out, "the danger of future wars will be actually greater, because of the multitudinous discordant States now arisen or arising." The historic situation of national rivalries among the Balkan states would be extended. In the past the empires had kept the peace among their rival nationalities. Now this would be the task of the League. In many cases they were "animated by historic hostility to one another," ready "to fly at one another's throats on very slight provocation."

The views of General Smuts have been quoted at length because there are no pages in the history of mandates or trusteeship which show as these did the inner unity of all these related phenomena and the function of mandates and international trusteeship in the state system of the world.

The problems of peacemaking after the Second World War have the same essential unity as after the first. In both periods of resettlement there were territories to be placed under mandate or trusteeship; there were sovereign states, to be raised up again from the ruins of fallen empires—this time of Germany and Japan; there were what General Smuts referred to as "autonomies." These, as he put it in terms familiar enough today, were territories that could not be fully sovereign but had to be "befriended, advised and assisted in varying degree by individual great States." In both periods of resettlement, guarantees of the protection of racial minorities and "human rights" were required in the area of Central Europe and the Middle East. The human-rights clauses of the peace treaties in the second world settlement, and in all the trusteeship regimes set up under the United Nations, had their parallels in the minority treaties of 1919-23 and in the minority and other safeguard clauses in the League mandates.

4. THE PHENOMENA OF THE INTERNATIONAL FRONTIER

Historically, mandates and international trusteeship are rooted in the decline and fall of empires, in the expansion of states into weak and backward areas, in the rivalries of states, in spheres of interest, and in the balance of power. Only one empire—the Empire of Spain—has fallen in modern times without producing any of the phenomena of international mandates or trusteeship. The reason was that the Spanish colonies were geographically already within, or were taken over by annexation into, the sphere of influence of the United States.

International trusteeship is essentially a phenomenon of the interna-

tional frontier. It is found mainly in certain great political frontier zones which historically have produced a series of related phenomena, such as spheres of interest tacitly or openly recognized by other powers, international territorial regimes of various kinds (including condominiums, mandates, and trusteeship areas), areas subjected by treaty to an open-door regime such as the Conventional Basin of the Congo, demilitarized areas, neutralized zones, buffer states, minority regimes, capitulations, leased areas, international settlements, etc.

All these related phenomena have occurred historically in several well-defined major frontier zones clearly visible on the map of the Eastern Hemisphere. The main axis runs from west to east through the Mediterranean and the Middle East to the Persian Gulf and Iran, and on to Afghanistan and the borders of China, including Tibet and Manchuria.⁴ North Africa is a principal part of this main axis, and provided in Morocco, Tunis, and Egypt some of the most dangerous diplomatic crises preceding the first World War. In a sense the whole of Africa forms an extension of the zone. Africa, the last great frontier region of the world, apart from the Antarctic, is Europe's southern frontier, into which it has expanded in the same way and at the same time as America and Russia expanded to the Pacific. The great central zone of international regulation known as the Conventional Basin of the Congo is a characteristic phenomenon of the international frontier. So are the African mandates and trust territories.

Across the main Mediterranean-Middle East axis runs another zone extending along the western side of the Turkish Empire from the Nile to Palestine, Syria, Anatolia, Constantinople and the Straits, and the Balkans. This frontier zone continues northward from the Black Sea to the Baltic through the wide, confused band of territory marking the eastern edges of Central Europe formed by the agelong advances and retreats of the Slav and the Teuton. Along the western edge of Central Europe from the Adriatic to the North Sea runs another historic frontier line between Slav and Latin, German and French. Another great frontier zone of overlapping spheres of influence between the powers lies in the Western Pacific and along the east coast of Asia; it is marked by the breaking out of condominiums, mandates, projected or abandoned trusteeship areas, and areas of disputed title, as well as by the penetrations of the powers into China.

⁴ The Anglo-Russian convention of 1907, delimiting spheres of special interest in Persia while upholding its integrity and independence, was a triple agreement affecting Afghanistan and Tibet as well as Persia.

(a) *The Merging of Zones into a World Frontier*

In the world of the League of Nations these great frontier zones, though clearly related (if only because the same great powers were to some extent involved simultaneously in all areas), could still be regarded as relatively distinct. In the world of the United Nations what was regional has become global. The zones have merged into a single world frontier. International disputes brought before the United Nations; problems encountered in the making of peace treaties with ex-enemy states, and in economic rehabilitation by the powers of shattered areas; special spheres of interest and rival claims to territory; and trusteeship discussions (whether in relation to old mandates or new ex-enemy territories)—all show the existence and characteristics of the international frontier. Physically, as we have seen, the main zone of the frontier now runs in a great arc around Eurasia from occupied Germany to occupied Korea and Japan, and the circle is completed through the Arctic. As these words are written, occupied Germany is a sort of four-power condominium. Proposals have been advanced from various quarters for United Nations trusteeships or mandates to individual powers (or international regimes of a still undefined character) at key points of great strategic and economic importance in the eastern or western frontier zones such as the Ruhr, the Saar, and Upper Silesia.

(b) *The International Frontier in the Mediterranean and Middle East*

Along the main Mediterranean-Middle East frontier zone at many points there have been many international arrangements, most of them with some mandatory or trusteeship features. Examples running historically west to east include the following: (a) The international regime in Tangier (set up in its present form in 1923 on the basis of an earlier treaty, revised in 1928 and 1945). Tangier is administered by an international municipal body, with provision for the open door, capitulations, and neutralization. (b) The principle of international responsibility established in Morocco by the General Act of the Conference of Algiers in April, 1906, as exemplified in the police mandate given by the powers to France and Spain, with a Swiss Inspector General. (c) The mandate conferred by Russia, Prussia, and Austria in 1815 on Great Britain in respect of the government of the Ionian Islands, and many other Adriatic examples, some of which are mentioned below. (d) The special international arrangement provided for Crete by the Concert of Europe in

1897-98 (by which the island, still nominally under the Sultan of Turkey, was given an autonomous regime that lasted till the World War; government was by a governor, appointed by the powers after months of search, who made quarterly reports to the powers; and the latter supplied troops for police purposes and made initial grants towards the cost of government). (e) The Cyprus convention of 1878. (f) The mandate given by the powers to France to intervene in the Lebanon in 1860 to protect the Christian minorities (which was the historical antecedent of the French mandate in 1920 under the League). (g) The League of Nations mandates for Syria, Palestine, and Iraq (and the case of Alexandretta mentioned above), which were a continuation of a long historical process.

The direct continuity between the earlier nineteenth-century mandates and minority regimes and the mandates of the League of Nations was very clear in the case of Palestine. It was the Jewish problem as a whole, the problem of Jewish minorities everywhere, that produced in the minds of Lloyd George and President Wilson, at the Peace Conference in 1919, the idea of the complementary solutions of (a) the minority treaties in the succession states and (b) the mandate for Palestine. Soon after the outbreak of the war, the idea of the return of the Jews to Palestine began to be discussed in London—the idea that finally crystallized in the Balfour Declaration of 1917 regarding the Jewish National Home and in the mandate. It was the mandate to France of 1860 and the mandatory regime set up by the powers in Crete in 1897 (referred to above) that Sir Edward Grey regarded as the best precedents for a solution of the Palestine problem.⁵

Other examples of international arrangements on the southern fringes of the Turkish Empire, were: the international regime of the Suez Canal, the Anglo-French condominium of 1879-82 in Egypt, and the Anglo-Egyptian condominium in the Sudan from 1899 onwards. The relations of the powers to Egypt from the seventies is a major source for the early history of the mandate idea. In the heartland of Turkey itself the Supreme Council in 1919 proposed to set up a whole series of mandatory regimes. Anatolia was to be divided between France and Italy in two separate mandates; Greece was to have a mandate in the hinterland of Smyrna; the United States was to be the mandatory for Constantinople

⁵ For the conversation on this with Grey (February 5, 1915), see Viscount Samuel, *Grooves of Change: A Book of Memoirs* (New York: Bobbs Merrill, 1946), p. 176. The Lebanon (1861) was "under the nominal protection of six European powers, with a Christian governor." *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. XII, p. 776.

and the Straits, as well as for Armenia.^{5a} The political vacuum caused by the collapse of the military power of Russia led to further projected mandates running deep into the Russian borderlands as far as Transcaucasia, for which Italy accepted the mandate, then withdrew. The United States Senate rejected the mandate for Armenia in June, 1920. The great powers were reluctant to extend their responsibilities into such quicksands. Finally, Turkey's revival under Mustapha Kemal eliminated all foreign intrusion. Under the Treaty of Lausanne of 1923, modified by the Montreux Convention in 1936, the Straits were placed under an international regime—though of a much milder kind than that applied to the other great entrance to the Mediterranean once held by Turkey, the Suez Canal Zone. The Straits—goal of Russian policy for centuries—form an ancient frontier between Russia and Turkey, Asia and Europe, that has never for long been free from eruptions. Treaties regulating the Straits run back to the late eighteenth century. Plans for the revision of the Montreux Convention, accompanied by Russian claims on Turkey, have recently been under discussion between the powers. The Dodecanese Islands commanding the Dardanelles were demilitarized by the peace treaty with Italy of February, 1947.

(c) *The International Frontier in Eastern and Western Europe*

More than a generation earlier the northern frontiers of Turkey in Europe had formed the subject of a highly interesting series of international mandates or regimes with mandatory features. These were devised by the powers at the Berlin Congress of 1878 for Eastern Roumelia and Bulgaria, and, in another form, for the former Turkish provinces of Bosnia and Herzegovina. In the decade from 1897 a somewhat similar series of attempts was made by the powers to deal with the troubles in Macedonia, caused by Turkish misrule and the incursion of armed bands from neighboring Christian states. All these schemes were the prototypes of the "A" mandates devised forty years later for Turkey's detached Middle East provinces. Mandates and trusteeship ideas were thus an old story in Turkey. From the seventies onwards the Concert of Europe tried to deal with the problems caused by the decay of Turkish power and misrule by devising scheme after scheme for reforms. The

^{5a} The American Section of the International Commission on Mandates in Turkey reported a general desire for the United States as mandatory. It recommended American mandates over all Syria (including Palestine), Turkey, and a "Constantinopolitan State"; the latter to be a perpetual American mandate. *For. Rel. U. S., Paris Peace Conference, 1919, Vol. XII, pp. 745-863.*

schemes were inspired by ideas of trusteeship and collective responsibility and their machinery was full of mandatory features as in the case of Crete mentioned above. Several of them aimed at the protection of particular minorities like the Armenians^a—and in doing so marked them for destruction. Though the schemes came to nothing they are of importance for the history of the international frontier and trusteeship.

The northward extension to the Baltic of the east European frontier zone is marked by many characteristic frontier devices: such as the minority regimes established after the first World War in the succession states; the regimes set up in Upper Silesia, Vilna territory, the Free City of Danzig. Perhaps most interesting of all was the forgotten Polish mandate of 1919 in Eastern Galicia, now published in the Paris Peace Conference records.^b In the end this mandate, which was a fully elaborated legal draft, was swallowed up in the Polish minority treaty when the area was finally absorbed by Poland. Further north, at the head of the Baltic, were the neutralized and demilitarized Aaland Islands (1921, and earlier in 1856).^{ba} To the extreme north, right in the Arctic itself, was Spitzbergen. This was first suggested as a Norwegian mandate. It was finally placed by the Spitzbergen treaty of February 9, 1920, under Norwegian sovereignty, but was demilitarized and remained open, under the special trusteeship provisions of the treaty, to the enterprise of the world. By 1947 it was a central point on the international frontier which now included the two polar caps.

The western edge of the central European frontier zone is another fertile breeding ground for arrangements characteristic of the international frontier, including a series of trusteeships, or of international regimes with some mandatory features. They were due partly to wars and political crises of the distant past; but the main eruptions came in the periods of resettlement of the frontier following the first and second world wars. The southern part of the frontier line runs through the Adriatic, the ancient line of cleavage in the Roman Empire and the Catholic Church; the line between the Slav, the Teuton, and the Latin; the scene, since the first Greek outposts in Italy in the pre-Christian era, of innumerable frontier clashes and adjustments, buffer states, neutralized and demilitarized areas, international regimes, mandates and trustee-

^a Article 61 of the Treaty of Berlin (1878) obliged Turkey to take measures to protect the Armenians; "It will periodically make known the steps taken to this effect to the Powers, who will superintend their application."

^{ba} The chief of the American Mission in the Baltic Provinces of Estonia, Latvia, and Lithuania recommended in June, 1919, as the result of an Allied study on the spot, that they be made British and American mandates. *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. XII, pp. 211-13.

ships. After the first World War there was an abortive Italian mandate for Albania. In the period between the Balkan wars and the peace settlement following the first World War, Albania (as befitted an area formerly part of the Turkish Empire) passed through in turn an international regime of the type devised by the Berlin Congress for Bulgaria and Eastern Roumelia; partial annexation; an Italian protectorate; a projected mandate; and finally independence and admission, in December, 1920, to the League of Nations. The proposed Italian mandate for Albania, as well as for southern Anatolia and Transcaucasia, was expressly devised as compensation for Italy in an endeavor to secure a settlement over Fiume.

The head of the Adriatic provided in 1919 as in 1946 one of the major controversies of the peace settlement. The battle over Trieste in 1946-47 produced the compromise international regime set out in the Permanent Statute of the Free Territory of Trieste. But the Security Council could not agree on a Governor General for the international dependency thus presented to it and the return of the territory to Italy was proposed. In the battle of Fiume in 1919-20, many different solutions were proposed and rejected—demilitarization along with certain Adriatic islands, annexation to Italy, a free city like Danzig, with League mandates in the neighboring cities of Zara and Sebenico. The crisis ended with Italian annexation, which was accepted by Yugoslavia under the agreement of January 27, 1924.

The defeat of Italy in the Second World War led to three typical phenomena in the Adriatic frontier zone and Italy's extension into Africa: (1) the Security Council trusteeship over Trieste mentioned above; (2) the demilitarization of Italian or Yugoslav islands in the Adriatic (a continuation and extension of demilitarization after the first World War) and of the small Italian islands between Italy and Africa; and (3) in the extensions of Italy into Africa, the projected trusteeships for Libya, Eritrea, and Somaliland.

Higher up along the western European frontier zone was the Saar Territory, a disputed border area between France and Germany which was placed in 1919 under a direct League of Nations trusteeship for fifteen years.⁷ This full League trusteeship was an alternative to a direct French mandate, which was the first proposal considered by the

⁷ Germany renounced rule in favor of the League "in the capacity of trustee" (Versailles Treaty, Article 49). Territorial adjustments without trusteeship are of course characteristic of the major frontier zones, as in the classic case of Alsace-Lorraine.

Peace Conference and is referred to in the Peace Conference records. On either side of the Saar Basin stood still other international landmarks pointing to earlier international settlements along the frontier: the neutrality of Switzerland recognized by the powers at the Congress of Vienna in 1815 (but stretching back to the Treaty of Westphalia of 1648) and the shorter-lived neutrality of Luxemburg and of Belgium

(d) *The International Frontier in the Pacific and Far East*

In the frontier zones of the Pacific and the Far East the same characteristic frontier phenomena have appeared. Southernmost is the Anglo-French condominium in the New Hebrides of 1906 which consolidated earlier arrangements; further north are the League of Nations mandate and the United Nations trusteeship held by Australia in New Guinea. To the east was the tripartite condominium regarding Samoa (between Germany, Britain, and the United States) which lasted for a decade from 1889 and, *inter alia*, proclaimed Samoa neutral territory. It was followed by German and American annexation of the two halves of the archipelago, and then, twenty years later, by the turning of the German half into the New Zealand mandate and trusteeship. To the north of Samoa a new Anglo-American condominium broke out in 1939 in the islands of Canton and Enderbury, important points on the trans-Pacific air routes. In the same general area, title to some twenty-five islands has been in dispute between the United States and Great Britain.⁸ Westwards lie the six hundred odd strategic islands of the Carolines, Marshalls, Palaus, and Marianas. First they were German territory, then from 1920 a Japanese mandate used as fixed aircraft carriers and naval bases. Finally, from July 18, 1947, all the islands became a strategic-area trusteeship held by the United States. Linked strategically with them were the score or more American bases obtained at the same time in the Philippines.⁹ This Pacific Islands trusteeship, the first of the strategic-area type under the Charter, demonstrated in the most spectacular way the abandonment of neutralization and demilitarization as a characteristic of international trusteeship. It marked the advance of the American strategic frontier thousands of miles across the Pacific.

In East Asia there was also a projected four-power trusteeship for Korea, which as these words were written had not gone beyond an in-

⁸ A map showing United States claims to eighteen British and seven New Zealand islands was published in *New York* (New York), on March 18, 1946.

⁹ Under the 99-year agreement of March 14, 1947, between the United States and the Philippines. The bases may be made available to the Security Council of the United Nations by agreement of the parties.

definite two-power occupation, with the Russian and the American zones divided by an iron curtain. This proposed trusteeship was not the first project of its kind in East Asia. For there was a hint at the Paris Peace Conference in 1919 of a similar possibility for the former German territory of Kiaochow in the Shantung peninsula. Whether international trusteeship will make any further headway in the former Japanese possessions outside the four main islands of Japan is still wholly obscure. It was not made a condition of the handing over of the Kuriles to the U.S.S.R. Japan itself is demilitarized and placed under a form of international tutelage of indefinite duration, controlled mainly by the armed forces and administrative services of the United States. The international frontier in Manchuria is marked by endemic warfare and international formulae. The Yalta agreements provided for an internationalized Dairen, restoration of the Russian base at Port Arthur, and joint control of the two main railways by a Soviet-Chinese Company.

Bare lists of compromise international solutions in different parts of the international frontier, such as those given above, can be misleading unless the whole context is kept in mind. Disputes not solved at all, or not solved in this particular way, but rather by means of annexation or the setting-up of completely independent states, are part of this context. Moreover, what happens anywhere on the international frontier affects relations and the balance of power at other points.

Thus, the condominium of the New Hebrides in 1906 was merely a last detail in a long chain of Anglo-French adjustments made between 1896 and the Entente of 1904, involving the settlement of conflicts at many points. These included Newfoundland, Morocco, Egypt, the Nile Valley, and the Burma frontier. Twice—over Siam in 1893 and at Fashoda in 1898—the conflicts had brought the two countries to the brink of war.

5. THE UNITED NATIONS AND THE INTERNATIONAL FRONTIER

Though League mandates were historically phenomena of the international frontier, the League of Nations managed to some extent to keep them out of the forefront of world politics. Individual great powers like Germany and Japan used mandates as a stalking-horse for war. Germany, profiting by the uncertainty of mandate status, kept alive the idea of the return of the German colonies and secretly organized the German settlers in Tanganyika and South-West Africa as Nazi cells to take over when war came. But neither Germany nor Japan was able to make much direct use of the Mandates Commission for political purposes.

This was due in part to the expert character of the Commission, and the sedulous avoidance of politics by the Secretariat. The League tried consistently, and on the whole successfully, to keep the emphasis on welfare and the interests of the native inhabitants.

The United Nations began its life dominated and divided by the international frontier, as the League had become only in its last years. Its trusteeship system was a new model introducing several important changes of a political character. Thus the conception of the mandate as a neutralized or demilitarized area was dropped for all trusteeships, and above all for the "strategic area" form. In place of a technical body of experts, not dependent on their governments, was substituted a Trusteeship Council representing governments.}

But these were minor matters compared with the circumstances in which trusteeship began to take shape. Like all the other aspects of the United Nations, it was threatened with a vertical cleavage along the line of the international frontier. In the first General Assembly trusteeship became largely a political issue fought out between two blocs. The Pacific Islands and the African mandates were dragged from their quiet backwaters to become cockpits for conflicting ideologies and competing political and strategic interests. Whether international trusteeship would succeed in fulfilling the hope of the Charter by promoting the welfare of the inhabitants and the interdependence of peoples, or whether its historical rôle would be to provide a favorite battleground for the United Nations, was a question to which, when this study was finished, there could as yet be no answer. That the first sessions of the Trusteeship Council (held in March and November, 1947, with the U.S.S.R. absent)²² should have begun in the spirit of the Mandates Commission, with as yet little open sign of the intrusion into it of the politics of the international frontier, might mean much or little.

Since international trusteeship is a phenomenon of the international frontier, any extension of the areas under trusteeship means an enlargement of that frontier. The extensions contemplated by the Charter itself were mainly in the category of "ex-enemy territory," to which the Covenant had confined the mandate system. The collapse of two more empires, Italy and Japan, left still further "ex-enemy" territory, some of which, as an outcome of political battles as yet undecided, might still be placed under international trusteeship.

²² The U.S.S.R. appointed a representative on the Trusteeship Council in April, 1948.

The possibility of even further extensions of trusteeship and of the international frontier was opened up by the provision of the Charter for "territories voluntarily placed under the system." "Voluntarily" in international politics could mean the opposite, i.e., a result achieved against the desire of the state concerned as a result of international pressures brought to bear through the organs of the United Nations, or outside them. A state could hardly be expected to relinquish voluntarily a portion of its territory to international trusteeship unless it had reasonable assurances on three essential points: (1) that the interests of the people of the territory would be as well served under international as under national trusteeship; (2) that the security of the state itself would not be impaired; (3) that the United Nations was really in a position to undertake the responsibility, and that the arrangement would contribute towards the general peace.

As matters stood in 1947 assurances on such points could hardly be given. In theory temporary arrangements, surrounded by an element of legal and political uncertainty, administered in the name of a weak general international organization, mandates and trusteeships held open an invitation to the powers to jockey for position. In an individual case an international trusteeship might be a practical and desirable solution. But there was no basis in experience for any general theory that trusteeship *per se* contributes necessarily to international stability.

The very mark and sign of the international frontier is an area open to the pressures and competition of the powers, in which no writ, either national or international, can run unchallenged. There could be no assurance that the United Nations, itself split by the international frontier, and without material power, could command that frontier. If the general international organization were to cease to depend on power borrowed on short-term loan; if it were to acquire a solid territorial basis, and large-scale and stable financial and material resources; if it were to secure its own armed forces on which it could instantly rely at all times—then, indeed, it might command the international frontier. But this was the outline of a world not yet born.¹⁰

To assess the contributions to peace on the international frontier made by international compromise solutions, including mandates and trusteeship, condominiums, neutralized and buffer states, would involve a ma-

¹⁰ The same considerations applied to proposals such as that advanced by the International Cooperative Alliance in June, 1947, for United Nations administration of the oil resources of the Middle East. *New York Times*, June 27, 1947.

for historical study. The value of such expedients depends on the temper and policies of the great powers at particular points of time.

Buffer states preserved or created by the powers in an effort to lessen their conflicts—like Poland, the Lowlands, Switzerland, Turkey, Afghanistan, or Siam—have played a useful rôle when all the great powers had a will to peace. But at other times they have tempted the aggressor.

Historians searching the vast unstable slope of world politics for the point at which the avalanche of 1914-18 really began to move have looked closely at the annexation of Bosnia and Herzegovina by Austria-Hungary in 1908. For this annexation removed a buffer arrangement, set up by international agreement, between Austria-Hungary and Russia. Yet the whole group of the Balkan buffer states were themselves a source of frequent international crises and war, so that "balkanization" has become a synonym for a condition dangerous to the general peace. The German states for centuries formed a vast buffer area in Central Europe. Their consolidation by Bismarck into the German Reich enabled Germany to wage two wars of aggression which were facilitated by the existence on her frontiers of weak buffer states.

Any extension of the international frontier through the creation of new trusteeship areas could only be a small detail on the vast canvas of the post-war world. For immense extensions of the international frontier seemed already to be taking place quite apart from the trusteeship system. The frontier was already greatly extended through the continued Allied occupation of Germany, Japan, Korea, and other areas in a sort of condominium unregulated by treaty. Moreover, most of southern and eastern Asia, including India and China, was in the political melting-pot. For generations the power and sovereignty of Great Britain and France had given much of this vast area security and had removed it from the international frontier. Now as a result of voluntary withdrawal by those powers, and of the internal pressure of revolutionary forces, the protecting walls of existing sovereignties were being broken down. Whether they could be replaced, and how soon or late, by strong indigenous local sovereignties, whether these could hold their own against foreign intrusion, resist manifold temptations to war with each other, and preserve themselves against civil war, was the unforeseeable work of incalculable forces.

PART I

MANDATES AND DEPENDENCIES. A GENERAL VIEW

CHAPTER II

THE PRECEDENT OF 1919

^s The League mandates system was the solution adopted in 1919 for one small part of the problems of dependent peoples. It was provided for in the first Covenant, which was drawn up by the Peace Conference issuing from the first World War. The system of League mandates is a chapter of some importance in world history. The record of the mandate system of the first Covenant is of practical importance as a precedent for the working out of the second Covenant (the Charter of the United Nations) and for the peace treaties that follow the Second World War. But a precedent can only be of value as a guiding signpost—or as a warning—if its real nature is fully understood. A real understanding of the mandates precedent is difficult to acquire. We have made, perhaps more than is usual in such cases, our own easy generalizations about its meaning which were not based on any rigorous scientific investigation. They were impressions of a general kind, influenced, as such impressions frequently are, by emotional attitudes which we have to discount in making any final objective judgment.

I. THE NECESSITY OF COMPARATIVE JUDGMENT

Moreover, any such judgment must be comparative. If it is not comparative in the widest sense it is no judgment at all, or at least it is merely tentative and a poor guide to policy. But a study of the mandate system which compares it with other forms of government of dependencies, and assesses its fundamental assumptions and ideas, and its place in the whole complex of world political and economic relations, is so beset with difficulties that it has never really been attempted. Some experts indeed take the view that any such comparative study is hardly possible, since circumstances, populations, territories, traditions, and forms of government differ so greatly. In this view it is wholly unscientific to base on the mandate system the conclusion that the mandate form of government for dependencies is superior to all other forms, since

in the nature of things this can be merely an unverifiable hypothesis.¹ It is hardly possible to say in any deeper sense what the mandate system *is*, unless we can explain clearly what it is *not*. If we do not see clearly what it is *not*, we run the risk of ascribing to it characteristics which we wrongly assume are peculiar to it. The point is important because from it stem most of the widely held misconceptions and hasty generalizations regarding the system—the underestimates as well as the overvaluations.

"The Mandate system," Lord Lugard said in his article on the subject in the *Encyclopedia Britannica*, "is a term applied to the conditions set up by the Treaty of Versailles for the administration of the former overseas possessions of Germany and Turkey." To the extent that any simple definition can do so, this goes to the heart of the matter. The system was an expedient invented to solve a practical difficulty which confronted the Peace Conference. In order to deal with the question of dependencies taken over from the enemy the Conference had to find an agreed principle and to define in the broadest terms the conditions which were to govern its ultimate application.

2. THE ORDER IN WHICH THINGS WERE DONE IN 1919-1923²

An understanding of the precedent of 1919 depends upon a clear view of the order in which things happened. The order of 1919-23 was: *First*, the Covenant, which was confined to a statement of general principles and conditions. *Second*, the Peace Treaties (Versailles, June 28, 1919, Sèvres, August 10, 1920, Lausanne, July 24, 1923), which ceded the ex-enemy territories to the Principal Allied and Associated Powers.³ *Third*, a series of political decisions by the Allies. The Allies decided (a) which ex-enemy territories were to become mandates; (b) which were to be left outside the mandate system; and (c) they drew up the

¹ See Emanuel Moresco, *Colonial Questions and Peace* (Paris: International Institute of Intellectual Cooperation, League of Nations, 1939), pp. 179 ff.

² For a detailed account of this important transitional period, see below, Chapter X.

³ By Article 119 of the Versailles Treaty Germany renounced her colonies in favor of the Principal Allied and Associated Powers, but she did so conditionally, the condition being that set out in Article 22 of the treaty, namely, that these colonies would become mandates. The position as regards Turkey was somewhat different. Under the Treaty of Lausanne (Article 16) Turkey simply renounced her rights to territories outside the frontiers laid down in the treaty, "the future of these territories and islands being settled or to be settled by the Parties concerned." The Covenant of the League of Nations did not form part of the Lausanne Treaty as it did in the case of the other peace treaties. The Covenant (Article 22) had referred only to "certain communities formerly belonging to the Turkish Empire" as prospective mandates. See below, Chapter III, section 2.

terms of the mandates. *Fourth*, the League (in force from January 10, 1920), which proceeded in the next two or three years to confirm the mandates, to clarify the texts of the mandates with the mandatory powers, to create the Permanent Mandates Commission, and to get the mandate system as a whole into full working order. It is important to understand why this procedure was adopted at the end of the first World War, and such understanding is dependent on knowing why other alternatives were rejected. |

The essential point to bear in mind is that the Covenant was confined to laying down general principles and conditions, and thus avoided what would have been, as we shall see, the almost fatal mistake of attempting to say to what territories these principles might ultimately apply. But first we must look at the principles themselves.

| The Paris Peace Conference had to choose between three alternatives for the ex-enemy territories: (1) annexation; (2) direct international administration; (3) the intermediate solution—for which there were precedents—of government of the territory by a state under mandate from the powers and from the League. It chose the third. As conceived by the Peace Conference the mandate system was not merely an expedient limited to a particular situation; it was also thought of as something essentially temporary in character. The assumption was that it would come to an end when the various mandated territories were able to "stand by themselves." |

3. ESSENTIAL FACTS OF THE MANDATE SYSTEM

Before proceeding further, some of the essential facts regarding the mandate system may be given. The basic texts are: (1) Article 22 of the League Covenant, which sets out the governing principles and outlines the machinery;⁴ (2) the mandate charters for the respective mandated territories, which may be regarded as "executive conventions for the application of these principles."⁵ Each mandate had the following clause:⁶ "The consent of the Council of the League of Nations is required for any modification of the terms of this mandate." | The Covenant named neither the mandated territories nor the mandatory powers. The African mandates (except Ruanda-Urundi which was established

⁴ See Annex I, below, for the text of the article.

⁵ League of Nations, *Ten Years of World Co-operation* ([Geneva]: Secretariat of the League of Nations, 1930), pp. 330, 333.

⁶ In some instances there was a slight variation in wording not affecting the substance. For texts of the three types of mandates, see below, Annexes III, IV, V.

later) and the Pacific mandates and their mandatory powers were named by the Supreme Council of the Allied and Associated Powers on May 7, 1919. The Asiatic mandates and the mandatory powers were named by the Supreme Council at San Remo on April 25, 1920. } A list of the mandates, "A," "B," and "C," and of the mandatory powers, as they stood in the year 1939 (and in 1947), is contained in Annex II, below; and the differences between the three classes are discussed in a subsequent chapter.⁷ The machinery provided in Article 22 for exercising supervision over the carrying out by the mandatory powers of the terms of the mandates, centered in the League Council and its advisory body, the Permanent Mandates Commission, which was one of the two permanent League commissions expressly provided for in the League Covenant. The Council had the primary responsibility for supervising the mandate administration, but the Assembly of the League was free to discuss any questions relating to mandates. The Mandates Commission was set up and appointed by the Council "to advise the Council," as Article 22 says, "on all matters relating to the observance of the mandates." It consisted of ten or eleven members acting in a personal capacity. They could not hold offices making them directly dependent on their governments, i.e., they did not represent their governments on the Commission. The majority were nationals of non-mandatory states. The Commission examined, in the presence of an accredited representative of the government, the annual report to the League Council submitted by each mandatory power. The observations of the Commission on each territory were embodied in its report to the League Council, and the latter, in turn, transmitted the observations to the governments. The Commission was purely advisory; it had "no power to render any decisions or to make direct recommendations to the Mandatories."⁸ Petitions from inhabitants of the mandated territories had to be forwarded to the League through the mandatory powers. They were examined by the Commission in accordance with rules laid down by the Council. The Mandates Commission held thirty-seven sessions, the last being in December, 1939. After that date no annual reports or petitions were examined, though a few were received in the earlier part of the war by the League Secretariat.⁹

⁷ See below, Chapter X, section 6.

⁸ *Ten Years of World Co-operation*, *op. cit.*, p. 340. See below, Chapter X, section 8, on the composition of the Permanent Mandates Commission; and Chapter XII, on its constitution and procedure.

⁹ See below, Chapter XVI.

4. THE "SACRED TRUST"¹⁰

The basic principle of the "sacred trust," both in its older form and in the newer form of the "dual mandate" (trust for native peoples and trust for the world at large) which Lord Lugard expounded and popularized, had been applied first in British dependencies. The conception of the sacred trust and the phrase itself come from Burke's famous opening speech for the House of Commons, on February 15, 1788, indicting Warren Hastings. The dual mandate received international legal recognition from the powers at the Berlin African Conference of 1885; and it was powerfully reenforced from 1900 onwards by American policy towards its newly acquired overseas dependencies. The League Covenant gave the principle a clearer and more solemn expression and made it the basis of the new system of international supervision devised for the ex-enemy territories. In a limited area international trusteeship was set up alongside of national trusteeship. The latter, with its long historical background and deeply rooted administrative experience, went on independently of the application of trusteeship within the mandate system, but has been strongly reenforced by the wider extension of the principle.

The principle of the sacred trust was thus a general one. Its particular application under the mandate system, as worked out over the years 1919-23, had in it a large element of haphazard and accident. This becomes clear when we look at the territories to which the system finally applied. In doing so we must not lose sight of the fact that the selection of territories to which the principle was to apply was not something specified in the Covenant, but negotiated subsequently by the Allied Powers.}

5. EX-ENEMY TERRITORIES—MANDATES BORN OF WAR

It was indeed a strange assortment of territories that the backwash of successful war against Germany and Turkey and the principle of "no annexations" flung finally together under the new system. The principle of no annexations could not of course be made retrospective. It had to be applied at a particular point of time. But we have only to look at the map to see how arbitrarily this principle seemed to work out in practice. It cut across an archipelago here or an island there, leaving

¹⁰ See below, Chapter VIII, section 3,

one half as a national dependency and making the other half an international mandate. At one extreme were ranged most of the ex-Turkish territories (not all of them, since the Arabian peninsula was left out). Iraq and Palestine (later divided into two territories, with the separation of Trans-Jordan) were mandated to Great Britain; Syria and Lebanon to France. These were cradles of western civilization and of great religions of Europe and Asia; and their peoples were capable of becoming independent states within a short period of time if they could in fact devise constitutions based on the consent of the main elements of the population.

At the other extreme the mandate system roped in savage stone-age clans, not even yet at the tribal stage, living a life that was indeed "solitary, poor, nasty, brutish and short," amidst the untamed jungles and unexplored alps of northeastern New Guinea and adjoining islands. But the southern and western ends of the great island of New Guinea still remained Australian and Dutch dependencies. Further west in the Pacific the line of the mandate cut directly across the fourteen islands of the Samoan archipelago, all inhabited by the same Samoan people. The eight former German islands were mandated to New Zealand. The other six Samoan islands which had been taken over by the United States of America in 1900 (at the same time as the Germans annexed their half) remained an American possession, governed as a naval station by a Commandant of the American Navy. On the equator a phosphate mine, the tiny island of Nauru, was mandated to the British Empire without affecting the British colonial status of a similar phosphate mine, Ocean Island, some miles to the east. North of the equator were the ex-German islands mandated to Japan: the Marshalls (taken over by Germany in 1885), the Carolines, the Marianas, the Palaus (which Spain sold to Germany in 1898 for \$4,200,000). The only island in these groups not included in the mandate was Guam in the Marianas, which remained an American possession. It had been taken over from Spain during the Spanish-American War in 1898, a fortnight before Congress resolved by joint resolution on the annexation of the Hawaiian Islands. In Africa mandates were set up in the midst of dependent territories administered by a number of different powers. South-West Africa, bordering on the Union, became a South African mandate. Tanganyika, in East Africa, became a British mandate, wedged between the British colony of Kenya to the north, the Portuguese colony of Mozambique to the south, and to the west British Northern Rhodesia and the Belgian

Congo. By a frontier adjustment made in 1919 a small territory was detached from Tanganyika to become the Belgian mandated territory of Ruanda-Urundi which was linked up administratively with the Belgian Congo. In West Africa the former German territories, the Cameroons and Togoland, were each split up to become: Cameroons under French mandate and Cameroons under British mandate, Togoland under French mandate and Togoland under British mandate. Thus, two British and two French dependencies have each attached administratively to them a long narrow finger of mandated territory; in the case of the Cameroons under British mandate the finger is cut in the middle into two sections.

The fact that the mandate system was born of war and of the problem of the disposal of conquered territories is the most important historical fact regarding it. If it had not been for the war of 1914-18 it is highly improbable that the system would have come into existence. The nature of its origin determined its character and scope, and governed its day-to-day working throughout its history. The limitations imposed by the circumstances of its origin were the very conditions of its success. If the experiment had been tried in 1919 on a world-wide scale it must almost inevitably have broken down of its own weight, perhaps carrying the League with it. The success achieved by the League in supervising fourteen such diverse and widely scattered territories was possible, first, because the task was limited and therefore did not overstrain the capacity of the newly created League bodies, and, secondly, because the mandatory governments gave willing cooperation.

CHAPTER III

WHAT THE COVENANT CONTAINED, AND WHAT IT OMITTED

One of the main conditions of that success becomes clearer when we look more closely at the exact rôle of the Covenant in laying the foundation for the mandate system. † Its rôle, as we have seen, was to lay down principles, and not to name the areas to which they might be applied. The naming of the territories was a procedure subsequent in time to the drafting of the Covenant; and the text of the latter throws little light on it. Article 22 began by mentioning the fact of conquest. Its opening words were: "To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them. . . ." It nowhere referred to Germany by name, but it did use the phrase, "certain communities formerly belonging to the Turkish Empire." For the rest the words used were vague, such as "other peoples, especially those of Central Africa," and "certain of the South Pacific Islands." One specific territory was in fact mentioned in Article 22, but that was merely by way of illustration, in the words "such as South-West Africa."

We know the steps which followed historically from this procedure of merely indicating general principles and the general category (ex-enemy territories) to which the principles were to apply. We know that fourteen mandated territories finally emerged at certain dates as a result of subsequent action by the Allies, acting alone or in conjunction with the League after it came into being on January 10, 1920. But, as usually happens in such cases, the alternatives which had been rejected in choosing the course finally adopted were soon completely forgotten.

I. CONSTITUTIONAL PRINCIPLES AND NOT POLITICAL DECISIONS

† Let us suppose that the Covenant had attempted to specify the actual territories to which the principles of Article 22 were to apply. This would have meant trying to make the Covenant do the work of a Peace Conference or of the Allied Powers. For such a list could be drawn up

only if it were possible to know beforehand the results of the interplay of highly intricate political forces involving factors of nationality and conflicting interests of powers, members of the League as well as non-members. How could drafters of the League constitution have taken the risk of not guessing right? In drawing up any such list in 1919 they would naturally have included at least some of the areas which at one time or another the powers had considered as appropriate for mandates. In General Smuts' plan mandates were thought of as applying to some Central European countries and border territories of Russia. According to an American dispatch to the State Department in November, 1918, the British Foreign Office was thinking at that stage of a possible application of the mandate system to Armenia, Albania, Persia, Constantinople and the Straits, possibly Anatolia, and the Belgian Congo.¹ President Wilson's fourth draft of the Covenant ventured on a list of former Turkish territories to be placed under mandate, and this list specifically mentioned "Armenia," "Kurdistan," and "Arabia" as mandates among others. Of these, only part of Arabia was to become a mandate. Armenia, Georgia, and Cilicia, among other territories, remained under active discussion for many months after the Covenant was framed and the League actually constituted.² None of them were ultimately included in the fourteen League mandates. [Thus, if the Covenant had not been framed wisely so as to confine it merely to general principles, the League might have been saddled from the outset with a whole series of failures. It would have sought and failed to put into operation the mandate system of the Covenant in areas where in fact it was later found to be impracticable. Such an initial failure could have been a political disaster of the first importance. As things turned out, the failure when it came was not a League failure. The responsibility for the failure was dispersed among the powers themselves, part of it falling on the American Senate, which shelved President Wilson's proposal that the United States should assume the mandate over Armenia.] In one other important case the League was not so fortunate. In an annex to the Covenant the United States was included in a list of the "Original Members of the League of Nations." The list was an attempt to anticipate a political

¹ United States, Department of State, *Papers relating to the Foreign Relations of the United States, 1919, The Paris Peace Conference* (Washington: Government Printing Office, 1942-), Vol. I, pp. 408-9. (Dispatch of the Military Attaché at London [Slocum] to the Chief of Staff, U. S. War Department, November 27, 1918.)

² For other examples, see above, Chapter I.

decision that could not be foreseen—the vote of the United States on the Treaty of Versailles. Article I of the Covenant adopted a wiser procedure. It laid down the conditions on which states could join by virtue of later political decisions.

2. INDIVIDUAL MANDATED TERRITORIES NOT FORESEEN

It is clear then that the Covenant could not foresee the ex-enemy territories that failed to become mandates. Could it have foreseen those to which the system was finally applied? This also would have involved anticipating a number of concrete political issues which were not really matters that could be foreseen and settled in a constitutional document such as the Covenant.³ When Article 22 spoke of "certain communities formerly belonging to the Turkish Empire," it was not certain that these were just Palestine (with Trans-Jordan), Syria, and Iraq. Actually only these four became in the end mandates. But this was not a decision of the Covenant. It was the result of a decision of the Allied Powers, first announced in the draft Treaty of Sèvres (August 10, 1920), to apply the mandatory principle only to Syria, Palestine, and Iraq. "It was decided," writes Temperley, "that the mandatory system should not apply to Central Arabia, or to the four ex-Turkish provinces of Hejaz, Asir, Yemen, and El-Hasa."⁴

Despite the vagueness of the language of Article 22, paragraph 4, which was meant to cover at least the four Asiatic mandates, it was still inaccurate in its anticipation of future political developments. For the article read: "Certain communities . . . have reached a stage of development where their existence as independent nations can be provisionally recognised. . . ." But the mandate system had hardly begun to operate before such an impasse was revealed in Palestine between Arab and Jewish elements that there could be no independence or autonomy because there was no community and no nation.

3. THE LOGIC OF 1919 AND OF 1945

Such, then, was the pattern of 1919. The League constitution was confined to constitutional matters. Political decisions were left to the

³ For an account of the series of subsequent political decisions on each of the territories, see below, Chapter X.

⁴ H. W. V. Temperley, *A History of the Peace Conference of Paris* (London: H. Frowde, and Hodder & Stoughton, 1920-24), Vol. VI, p. 505; also *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. V, p. 770.

Allied Powers and the League Council and Assembly when they should begin to function. Since similar necessities tend to impose similar solutions, the same pattern seemed to be shaping twenty-six years later when the United Nations faced the problem of framing its Charter, and of deciding what to do about the problem of ex-enemy territory, old and new. The logic of 1919 still held good in 1945. It had become, indeed, still more compelling. For this time the precedent of 1919 was not being followed in one important aspect. The constitution (or charter) making was not to be part of the peace negotiations, nor was the text to be attached to the peace treaty as the Covenant had been. It was to be drawn up far in advance of the peace treaties, at a time when the Far Eastern half of the war was still in mid-stream. Some guesses might be attempted—but with the same perils as in 1919—as to the disposal of ex-enemy territories in Africa. But even guesses were hardly possible in the Far East, since the ultimate political pattern of this half of the war was still quite uncertain. Moreover, in the Cairo Declaration of December 1, 1943, the three Allies then at war with Japan—the United States of America, Great Britain, and China—had seemed to reject a mandate solution for some of the ex-enemy territories in that region; and the fate of the other Japanese territories was left undecided.⁵ Japan was to be “stripped” of Pacific islands; territories “stolen from the Chinese” were to be “restored” to them. From “all other territories . . . taken by violence and greed” Japan was to be “expelled.” Korea was to become free and independent “in due course.” The words pointed to future political decisions which could not be provided for in the constitution of the United Nations, nor foreseen by its drafters.

4. THE ALTERNATIVE OF UNIVERSAL APPLICATION

We have explored far enough the reefs and shoals which were missed in 1919 by steering the ark of the Covenant away from the alternative of overdefiniteness in the matter of ex-enemy territories. Let us look at the other alternative from which the Covenant was steered away by its

⁵ The three relevant sentences of the Declaration were: “It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.” U. S. Department of State, *Bulletin*, December 4, 1943, p. 393.

drafters—that of trying to apply the mandate system to all dependencies. The rejection of this alternative was so decisive that the matter was never formally raised at Paris by any government, nor was it even discussed. But the idea of generalizing the mandate system was perfectly well known to the drafters at Paris, since it had been put forward publicly for African dependencies at the end of 1917 by the British and Continental labor parties, and had attracted widespread attention.⁶ No student of the records of the Paris Conference could have much doubt why the alternative was rejected. If the Covenant had been burdened with this issue it would never have made its passage through the drafting Commission. As it was, mandates were much the most difficult and controversial question before the League of Nations Commission of the Peace Conference.

The problems facing the Peace Conference itself were so vast that to have unloaded this issue upon it might have broken it down. As the historian of the Conference has said, the business of a Peace Conference is—

to make peace. . . . The urgent necessity is to bind up the severed ties, to set going once more the current of life between countries. . . . A Conference must aim at the possible. . . . Otherwise it will dissolve in long academic discussions, and lose sight of its practical object. It is fatal for it to be ambitious. If it can make peace quickly, and at the same time do nothing to prevent future development on sound lines, it has done a very great deal, and as much as can be expected of it.⁷

As Lloyd George reminded a too impatient House of Commons on April 16, 1919, the territorial changes of the war were on a gigantic scale affecting every continent: "Ten new States have sprung into existence. . . . The boundaries of fourteen countries have to be re-cast."⁸

5. WHAT IS A DEPENDENCY?

No question was better calculated to plunge the Conference into just this sort of "long academic discussion" than an attempt to answer the

⁶ *The Times* (London), August 11 and 29, 1917; February 25, 1918. See below, Chapter IX, section 1.

For labor manifestos and declarations, from early in 1918 to April, 1919, see British Labour Party's *Labour and the Peace Treaty: An Examination of Labour Declarations and the Treaty Terms*, Handbook for Speakers (London [1919]).

⁷ Temperley, *op. cit.*, Vol. V, pp. 19-20.

⁸ David Lloyd George, *The Truth About the Peace Treaties* (London: Victor Gollancz Ltd., 1938), Vol. I, pp. 565-66.

questions "What is a dependency?" and "To which territories should the mandate system apply?" As we have seen, it was so difficult to answer such questions even within the very narrow limits of "ex-enemy territories," that the Conference was content to wrap up its answers in vague phrases which the issue showed had still been left too precise. To have entered upon the task of defining a dependency, and, still more, of trying to list dependencies, would have meant entering a trackless land swept by windy debate. As the United States Tariff Commission pointed out in a book prepared just after the Peace Conference, "the subtle and constantly changing political relations of the world's territorial divisions defy simple or hard and fast definition and classification."⁹

6. THE VICE OF LANGUAGE

In such a trackless land the skilled dialecticians at Paris—Wilson and Clemenceau, Smuts and Balfour, Lloyd George and his Australian fellow Welshman W. M. Hughes—would have found it only too easy to talk without meeting. The representative of each country would have discussed the matter in his own national terminology. The nuances could be depended upon to baffle not only delegates but also translators—and there were no translators for English into American and vice versa. For words have different meanings, not only in different languages but in what passes as the same language. The word "colony" means more

⁹ United States Tariff Commission, *Colonial Tariff Policies* (Washington: Government Printing Office, 1922), p. 6.

The Commission (pp. 6-10) explored some of the difficulties involved in deciding whether or not a particular territory was so completely self-governing as to cease to be a dependency, or so closely assimilated to the mother country as to be classified as part of it. It excluded the Isle of Man and the Channel Islands from the term "colonies" despite important legal differences distinguishing them from Britain. Algeria, it pointed out, has been formally declared a part of France; and the Portuguese colonies "are officially styled 'Overseas Provinces.'" Alaska and Hawaii, the Commission indicated, have a "territorial" status and as such "are not usually regarded in the United States as 'colonies,' though they have only 'Delegates' in Congress and are ultimately subject to Congress in the exercise of the rights of local government . . . and they have no guaranty that they will ever attain statehood. The population of Hawaii is alien to the extent of 88 per cent; geographically, racially, and legally Algeria seems more entitled than Hawaii to be considered an integral part of the country which governs it."

The phrase of the United Nations Charter was "non-self-governing territories," described as "territories whose peoples have not yet attained a full measure of self-government." This has no clear meaning; and might be interpreted in a number of different ways—including an interpretation which would exclude all territories regarded as incapable, by force of circumstances, such as location, size, resources, of attaining full self-government. See below, Chapter XVII.

or less the same thing in Australian-English as in English-English. But in American-English an American possession or dependent area is normally called "territory" or "insular territory."¹⁰ The word "colony" has remained in bad odor since the Revolution. It is usually reserved for foreign possessions. For convenience the United States Tariff Commission, in the book referred to above, applies the term colonies to "the Philippines, Puerto Rico, American Samoa, Guam, the Canal Zone, and the Virgin Islands," but it points out that "official usage uniformly refrains from referring to them as Colonies."¹¹ Historically, as we shall see below, the term "territory," and the constitutional forms worked out a hundred years before to fit mainland territories, were carried overseas and applied to the territories acquired by the United States in the Pacific and the Caribbean at the end of the nineteenth century.

The proverb has it that names do not matter much, since a rose by any other name would smell as sweet. But in politics different names for the same rose do not result in sweetness; and serious difficulties are caused by large or small differences of meaning attached in various countries to apparently identical words, such as colony, colonialism, dominion, empire, king, republic, citizenship, subject, imperialism, capitalism, socialism, internationalism, nationalism, independence, self-government, democracy, freedom, power and power politics, and many others.¹² The different meanings are due largely to the quality and volume of the emotional charges which the words draw up from their roots in different national traditions. The difficulty is increased by the fact that many users of such words are often not conscious of the difference of meaning or

¹⁰ The usage goes back to (and indeed beyond) the beginning of the century when most of the American overseas possessions were acquired. W. F. Willoughby, *Territories and Dependencies of the United States; Their Government and Administration* (New York: The Century Co., 1905), p. 290, refers to "the disinclination of the American public to make use of the word 'colonies'"; but he points out that in certain cases at least, such as Samoa and Guam and even the Panama Canal Zone, "the United States has had to do with colonies in the strictest sense of the term."

¹¹ *Colonial Tariff Policies*, *op. cit.*, p. 572. Official usage, it points out, was due in part to a carryover of terminology applied more than a century before to mainland territories which were given forms of government "essentially colonial in character." This was designed as a temporary stage to be followed by assimilation into the Union as full states. See also Theodore Roosevelt, *Colonial Policies of the United States* (New York: Doubleday, Doran & Company, Inc., 1937), where the word "dependency" is freely used, e.g., in the phrase "our minor dependencies, such as Samoa, Hawaii, Alaska and the Virgin Islands." Colonel Roosevelt was Governor of Puerto Rico and High Commissioner of the Philippines under the Hoover administration.

¹² See Secretary of State Marshall on "Democracy," at the Council of Foreign Ministers, Moscow. *New York Times*, March 15, 1947.

that the words are emotionally charged. If they know, they may forget and so be mystified when an international discussion suddenly waxes hot "over nothing."¹⁸ Or, again, the differences of meaning may be consciously played upon for purposes of propaganda.

7. LANDWARD AND SEAWARD EXPANSION

Difficulties caused by the divergent meanings of the "same words" are due in part to the fact that those who use them do not share the same fundamental assumptions. One party, for example, thinks in terms of expansion by sea lanes, and the other by land roads or inland waterways. One regards the differences between these ways of expansion as irrelevant and the other as fundamental. The peoples in great continental areas such as the United States, Canada, Australia, and Russia, in their expansion into border territories at the expense of primitive peoples, built up on their margins temporary conditions of colonization and dependency. But in the end the border dependencies have tended to be assimilated and to be treated as an integral part of the national or federal state.

The idea that expansion by seaways, in the same space of time and for the same kind of reasons, has been of a quite different kind would have delighted a medieval schoolman. How wide, he might have asked, must be the space of water before a territory ceased to be a detached part of the mainland and became "overseas" and so was presumed to have become incapable of uniting politically with, or being assimilated to, the mother country? And he could have made good play with little-known facts of geography. Newfoundland, he would have pointed out, had a better claim to be regarded as Overseas Britain than Hawaii as Overseas America. For the latter was 2,400 statute miles from the American mainland and its population is preponderantly Asiatic and Polynesian. Newfoundland, on the other hand, was wholly British in population—and only 2,300 statute miles away from the mother country. And the questioner might have gone on to ask, if the debate had been rather later than 1939: "What did land and sea distances matter anyhow in the air age when no point on the planet was separated from another by more than sixty hours—or had it already dropped to thirty?"

¹⁸ See Carl L. Becker, *How New Will the Better World Be? A Discussion of Post-War Reconstruction* (New York: A. A. Knopf, 1944), pp 75 ff.; and on land and sea expansion, pp. 87-107.

CHAPTER IV

THE NATURE AND IMPORTANCE OF THE MANDATE SYSTEM

The official list of "States, Colonies, Protectorates, Overseas Territories, and Territories under Suzerainty or Mandate" published annually since November, 1933, by the League of Nations in pursuance of Article 5 of the Drugs Limitation Convention of 1931, showed the pre-war world as divided up into 69 states and at least 118 "territories."¹

While the Peace Conference rejected any idea of the extension of the mandate system to the more than 118 dependencies in the world, and confined it to only fourteen out of the score or so of ex-enemy territories, even this step meant launching the experiment on a very wide scale.

In area, as Lord Lugard has pointed out, the mandates were "equal to a third of Europe, and their inhabitants number about twenty millions in varying degrees of human development."² The choice of samples for a large-scale experiment was accidental; but, as we have seen, the samples were widely scattered and representative of conditions in five separate regions of the world. The fact that, where a halting and cautious beginning with two or three territories might have been expected in view of the novelty of the mandate system, the Allied Powers launched it on so great a scale, was surely a tribute to the courage and statesmanship of their leaders.

¶ Taking as a whole the twenty years' record of the working of the system, we can say two things about it: first, that the League and the mandatory powers fully accepted the obligations imposed on them by the

¹ Cf. statement for the year 1935, L.N. Document C.462.M.198.1934 XI. There appears to be no other international list of the kind in existence with a legal basis. The convention is universal in its application, and requires the publication of an estimate for *all* states and *all* territories. The full number of territories is actually well over 118, since a state having overseas possessions may still satisfy the convention by including their needs in its own estimate; thus, Portugal's estimates cover "contiguous islands," while for the United States, estimates are given "including territories and insular possessions, except Philippines."

² Foreword to Freda White, *Mandates* (London: J. Cape Ltd. [1926]). For present figures, see Annex II, below.

Covenant and the texts of the mandates; and, secondly, that they carried them out with sufficient devotion and skill to make the system work as it was designed to work. It was designed to provide, first, a stable government in each mandated territory; secondly, an efficient international supervision over the carrying out in the territories of the principles embodied in Article 22; and, thirdly, by stating these principles in a universal covenant and by demonstrating them in operation in the mandates it was to be a yeast to leaven the mass of dependent territories and strengthen in them the principle of trusteeship.}

I. THE MANDATE DOCTRINE—ARTICLE 22

{ Perhaps in some ways the third objective—the statement of principles and its leavening effect—will be judged in the long run to have been the most important.} Whatever should happen to the mandate system or its individual elements and procedures, the formulation of Article 22 of the Covenant, and its acceptance at one time or another by every state in the world on becoming a member of the League (except the United States of America, which was never a League member), is clearly of capital importance. {As Sir John Fischer Williams has remarked, “the introduction of this doctrine of Mandates into international relations is an event of the very first significance, and if the Covenant had done nothing more than express the new doctrine for the first time it would by that alone have been a document of great historical importance.”^a He described Article 22 of the Covenant as doing three distinct things, each of outstanding importance: (1) It established firmly in the international sphere “the Anglo-Saxon conception of the trust . . . with what may be the beginnings of a system of enforcement.” (2) It attacked “the authoritarian doctrine of national sovereignty.” (He appeared to favor the view that sovereignty was vested in the mandatory power. But he pointed out that even if this view were valid the mandatory power would still possess such sovereignty merely as a trustee. The mandatory was subjected by Article 22 to League supervision and was made accountable for the exercise of his trust.) (3) It attacked “the libertarian dogma of the equality of man.” It thus, he held, gave practical recognition to the fact—as distinguished from religious and ethical ideas

^a Sir John Fischer Williams, *Some Aspects of the Covenant of the League of Nations* (London: Oxford University Press, H. Milford, 1934), pp. 205-8.

of what ought to be—that “the world contains communities with different rights appropriate to their respective circumstances.”⁴

The importance of the kind of international statement of the principle of trusteeship embodied in the Covenant was shown by the far greater impression it made on governments and peoples than any single national declaration of the same principle ever issued. For this there were several reasons, of which two may be mentioned: First, Article 22 was a solemn and universal law and commandment. It was obviously not issued in the interest of any particular nation, but on behalf of the family of nations. Moreover, it was not merely a commandment left hanging in the air. It had a definite territorial sphere of application and a permanent machinery of enforcement. Through the unique sounding board of the Assembly it could keep world opinion continuously mobilized in support of the principle. By a continuous process of reports, meetings, questions, criticisms, and publicity the League fixed and deepened the impression made by Article 22.

2. MANDATES AND THE FACTOR OF CONSCIENCE

The second reason for the impression made by the system is that under favorable conditions the factor of conscience may operate more effectively in an international than in a national group, or even in an individual person. Lord Olivier saw the importance of this point in his prophetic forecast of the League's rôle in relation to primitive peoples published in the summer of 1918. However cynical the temper of any particular nation may be in relation to backward peoples, he pointed out, “such cynicism and callousness do not gain ground, but are relaxed and modified, by any international contact between able and public-spirited men. International Conferences, Councils, Leagues, effectually, if gradually, raise the *professed* standard of administrative principle to the highest common level of humane conscience and purpose.”⁵ It was the League's business, most skilfully and successfully performed, to help governments to

⁴ This, he emphasized, was no denial of the view that native peoples have the same right to protection from wrong as their more “advanced” neighbors; and, we may add, the same ultimate right to advance as fast as they are able towards self-government.

⁵ Sir Sidney Olivier, *The League of Nations and Primitive Peoples* (London, etc.: Oxford University Press, H. Milford, 1918).

President Wilson, in presenting the Covenant to the Peace Conference on February 14, 1919, spoke of the “world expressing its conscience in law,” while Senator Austin, on October 30, 1946, said the General Assembly wielded its power primarily as the “voice of the conscience of the world.”

live up to such professed standards. League Committees and the Secretariat knew instinctively how to utilize to good advantage this factor of mass psychology.⁶

It would be misleading of course to imply that the factor of conscience operated only in international conferences. It has operated in great strength in national parliaments where it has produced results with widespread international repercussions. The most famous examples are to be found in humanitarian movements such as the abolition of the slave trade and the emancipation of slaves in the British Empire in the period 1807 to 1838. A well-developed national conscience rooted in tradition and kept vigilant by parliamentary institutions affords a guarantee of justice even to an enemy in time of war. As Mr. Churchill put it to the Axis early in 1945: "We are not extirpators of nations or butchers of people. . . . We remain bound by our customs and our nature." On the whole it is fair to say that the colonial policies of the advanced parliamentary democracies which have controlled in our time most of the world's dependencies—Britain, France, Belgium, Holland, and the United States—have been forged out of their "customs and nature" and tempered by vigilant parliaments acting as keepers of the national conscience. But the national conscience has been helped and supported by having before it an international code and example. Even the limited provisions of the Berlin and Brussels Acts were of great value as a rallying point for putting an end to the abuses in the Congo before the first World War.

3. INFLUENCE ON NATIONAL DEPENDENCIES

Whenever the Permanent Mandates Commission hammered at some element of trusteeship in Article 22 the echoes have resounded through dependent territories in every continent. Ethical principles such as the "sacred trust," and the international code for the welfare of native peoples set out in Article 22, are contagious. They cannot be confined merely to certain territories. If the ethical principles and the code of welfare are valid they are of universal validity. So that a nation which had once accepted a mandate had to expect that its whole colonial policy and administration was likely to be affected by developments in its man-

⁶ The operation of this factor at Geneva and in international conferences has never been studied scientifically. "The Geneva spirit" was an unhappy phrase but it pointed to the existence of a phenomenon worthy of study.

dated territory or by discussions on it at Geneva. The acceptance of internationally binding mandate obligations gave to ministers and officials, parliaments and public opinion, a criterion, embodied in the highest law, to which appeal could be made against any policy or practice in a non-mandated territory which could be shown, or plausibly represented, to be in conflict with the mandate principle.⁷ Moreover, the provisions in the individual mandates on forced labor, labor contracts, labor recruitment, etc., have supplied an invaluable lever to the International Labor Organization of the League. Using in part this lever, it has been able to secure the enactment, and application in non-mandated territories, of such international conventions as those on Forced Labor, 1930, Recruitment of Labor, 1936, Penal Sanctions, 1939, Regulation of Contracts, 1939.⁷

Eminent colonial administrators have testified to the help given to them by the mandate system in their administration of national dependencies. Sir Hubert Murray, who fashioned in Papua a model mandate long before League mandates were thought of, testified on this point in 1924. "The principles which the Covenant embodies must be taken," he said, "to extend also to colonies and territories. . . . Article 22 in fact means the final repudiation of one system of colonial government [the "business proposition" theory], and the definite acceptance of another."⁸ Yet, he added, the danger of a setback was always present. White settlers were always in danger of reverting to the earlier view or of acting on it unconsciously; and he confessed to a feeling that "during the last few years there has been a reaction" against the sacred-trust view. He thus welcomed Article 22 as strengthening his hand as governor in carrying out in Papua the policy of the sacred trust. The continuance of this policy was, indeed, as he had pointed out on a number of occasions before the war, the condition on which Australia took over Papua from Great Britain in 1905.⁹

4. THE MANDATES COMMISSION AND ITS PROCEDURES

| An effective international supervision over the working of the mandates was secured largely through the Permanent Mandates Commission. An important feature of this supervision was that it was exercised

⁷ See below, Chapter XV, section 6.

⁸ Sir Hubert Murray, *Papua of Today; Or an Australian Colony in the Making* (London: P. S. King and Son, Ltd., 1925), pp. 210-13.

⁹ *Ibid.*, pp. 214-16.

long after the event,¹⁰ though it could affect, and often did, the existing and future action and policy of the administration of a territory. The supervision was based on the annual reports submitted by governments, which were not examined until six to ten months after the end of the year to which they referred. Thus, in the extreme case the Commission might not actually examine a situation which occurred in January, 1935, until June or October, 1936. By the time it had received and examined answers to its questions in the next annual report a further six to twelve months might have elapsed. Therefore the supervision exercised by it was essentially *supplementary*; since during the actual course of the year supervision had already been exercised by the national government and parliament of the mandatory power as in the case of any normal dependency.

Not even the outbreak of a world war could deflect the Commission from its rule that it was precluded from enquiring into the events of the current year unless the accredited representatives chose to supply data in advance of the annual report. The Commission's report to the League Council on its last (thirty-seventh) session in December, 1939, under the heading "The Mandated Territories and the War," stated:

The Commission has deliberately refrained from anticipating the events of 1939 by examining the situation created by the present war in connection with territories placed under the mandate of belligerent Powers. It will do so in the light of the information with which these mandatory Powers supply it when they give an account of their stewardship during 1939.¹¹

Nothing could demonstrate better than this how far back from events the Commission stood, how much it was a spectator on the sidelines, and how little its function could be that of a government, or a court actively intervening to help its wards in the fate that had befallen them. For the fact that war, with all its far-reaching legal, political, and economic consequences, had enveloped the mandated territories, was without question the most decisive event in their history. In defining its own functions in the past the Commission had repeatedly emphasized its desire to act "as collaborators who are resolved to devote their experience and their

¹⁰ The fact that in certain circumstances a judgment and supervision which is *ex post facto* can still be a powerful weapon of international control is shown by the record of the Permanent Central Opium Board operating under the Dangerous Drugs Conventions of 1925 and 1931.

¹¹ League of Nations, Permanent Mandates Commission, *Minutes of the Thirty-Seventh Session, Held at Geneva from December 12th to 21st, 1939, including the Report of the Commission to the Council, Document C.7.M.5.1940.VI., Annex 4.* (Series hereinafter cited P.M.C. Min.) See below, Chapter XVI.

energies to a joint endeavor.”¹² It would strive, it said, in its work of “supervision and co-operation . . . to assist the mandatory Governments in carrying out the important and difficult tasks which they are accomplishing on behalf of the League of Nations.”¹³ Yet in the supreme crisis of general war it felt unable to do more than ask the accredited representatives a legal question: whether in their opinion “the state of belligerency in which they were themselves involved extended to the territories under mandate.” Professor Rappard, expressing a view which seemed to be shared by several members of the Commission, doubted whether this could or should be the case, since “the belligerent Powers . . . administered them in the name of the League of Nations which was not at war.”¹⁴ But this question, it has to be remembered, was itself one of the very last acts of a League already in collapse.

Those of us at Geneva who watched the various technical organs of the League at work year after year would agree that the Permanent Mandates Commission was unique in its combination of several factors—rapid maturity, the high level and continuity of its membership, the stability of its constitution, and the definiteness and certainty of its procedures. It gave the impression of being born almost full grown. It fell swiftly into its stride, worked out rapidly its basic procedures, and began in a remarkably short time to carry out in full measure the tasks assigned to it under the Covenant. It was already a smoothly running machine at a time when most of the other League commissions had still not reached their final shape in the matter of organization, and were still tentatively working out their procedures and unsure of their spheres of action.¹⁵

The Commission held steadily to its course year after year, examining and analyzing the Annual Reports. Each member, a specialist in some aspect, put questions to the accredited representatives of the mandatory powers as they took their seats in turn at the table. Each year reports went forward to the Council on its findings. Year after year, as the mass of annual reports by governments passed over one's table together with the Minutes and Reports of the Commission, certain impressions began to form. One began to get the feeling that something was happening with great rapidity in the sphere of international administration which had taken centuries to develop in the national sphere.

¹² L.N., *Official Journal*, II (1921), p. 1125.

¹³ P.M.C. *Min.* VIII (1926), p. 200. See below, Chapter XIII, section 4.

¹⁴ P.M.C. *Min.* XXXVII (1939), pp. 120-22.

¹⁵ See below, Chapters XII and XIII.

In the case of national parliamentary governments (as of national judicial institutions) rules and procedures, such as those governing the powers of Parliament, relations with the Executive, debate, and legislation, are far more than mere forms: they are arteries through which the life blood of the state flows. "These rules and orders," said the report of a famous Select Committee on the Business of the House of Commons in 1861, "are the fruit of long experience; a day may break down the prescription of centuries. It is easy to destroy; it is difficult to reconstruct."¹⁶ It would be foolish to compare this august spectacle of rules and orders, evolved by more than twenty successive generations of parliamentarians, with the procedure worked out in two decades of international experimentation in Geneva. But that the analogy should have occurred to an observer of the work of the Mandates Commission at the height of its powers in the mid-thirties was an indication of the impression it made of a body firmly established and rooted in a long experience.

Yet in all this—the swift maturity, the well-defined procedures, the steady routine of work—there was a faint air of unreality. The Commission lived remote from the territories. Because of limitations imposed by the Covenant and the League Council it was unable to visit or inspect them. It tended therefore to give undue weight to legal aspects and to procedures. It worked mainly on the basis of annual reports on past events, and could never overcome this time lag. It described as follows in 1925 its own rôle in exercising its judgment on past events: "It is its duty, when carefully examining the reports of the Mandatory Powers, to determine how far the principles of the Covenant and of the Mandates have been truly applied in the administration of the different territories."¹⁷ In practice its main rôle tended to be of an Old Testament character. It was the keeper of the Ten Commandments of Article 22 of the Covenant. It looked on itself as charged with bringing to light breaches and urging their rectification. It was zealous, though very diplomatic, in the exercise of its legal powers. But it was reluctant to step outside these powers and to offer positive suggestions to the mandatory powers as to how the territories should be administered and developed. In short, its attention was fixed mainly on judging past events and particular situations, rather than upon prescribing future action. Its

¹⁶ Josef Redlich, *The Procedure of the House of Commons; A Study of Its History and Present Form* (London: Archibald Constable & Co., Ltd., 1908), Vol. I, p. 103.

¹⁷ P.M.C. Min. VIII (1926), p. 200. See also below, Chapter XIII, section 4.

reports to the League Council (as Lord Hailey, one of its members, has pointed out) usually consisted of "requests for further information, or in expressions of hope that the next annual report will indicate an improvement in an unsatisfactory situation."¹⁸ Thus few, if any, of the many important positive developments that took place in Africa in the way of increasing self-government, health measures, sanitation, education, the application of science to the problems of the African environment, labor legislation, and many others that are chronicled in *An African Survey*, were due to any direct initiative on the part of the Mandates Commission.[†]

¹⁸ Lord Hailey, *An African Survey; A Study of Problems Arising in Africa South of the Sahara* (London, New York, etc.: Oxford University Press, 1938), p. 220.

CHAPTER V

THE COVENANT'S PLAN FOR DEPENDENCIES

I. THE PLAN OF 1919—REGIONALISM, UNIVERSALISM, AND THE MANDATES

As we shall see in the third part of this study,¹ the persistent idea that this laggardly, somewhat negative and passive form of international supervision was the main thought of the drafters of the Covenant in respect of dependencies, is one of the most striking historical misconceptions about the Paris Peace Conference. The full conception for dependencies comprised three elements: (1) continuance and revivifying of the nineteenth-century conception of regional action by governments in Africa; that is, coordinated action on the social and economic needs of all territories, including the mandates, by means of African conferences of governments and regional legislation; (2) action by governments and the League in matters of common world-wide concern, to be carried out in dependent areas as well as among independent peoples; (3) a Mandates Commission for the African and other mandates to watch over the fulfilment of the terms of the trusteeship. But in practice this full conception, which was clearly what the American and British colonial experts thought the Covenant involved, faded away. The central structure was never used much for dependencies and the right wing was never built. The only part which was completed was the left or mandates wing, which was not designed to supply more than a very limited part of the needs even of its fourteen scattered territories. As will be explained in a later chapter² Article 23 (b) of the Covenant, which is a relic of part of this general conception, remained dead wood from which nothing ever grew.³

In 1942 and after, needs arising out of the war, together with a more active development policy on the part of governments, caused a return

¹ See below, Chapter XIV.

² *Ibid.*, section 4.

³ Article 23 (b) reads: "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: . . . (b) undertake to secure just treatment of the native inhabitants of territories under their control."

to the original trend of 1885 to 1920 in the shape of regional commissions of experts, or administrators, representing governments. War-time examples were the Middle East Supply Center; and the Anglo-American Caribbean Commission set up in March, 1942.⁴ A somewhat similar type of regional organization was proposed for other regions by the British Government in its declaration to the House of Commons on July 13, 1943,⁵ and for the Southwest Pacific area by the Australian-New Zealand treaty of January, 1944.⁶

The Caribbean Commission, as it became known in 1946, is advisory in its functions and is concerned with social and economic matters of common interest to the region. It was joined by the French and Netherlands Governments at the end of 1945. In accordance with a recommendation in March, 1946, by the second session of the permanent West Indian Conference of all territories (which meets under the auspices of the Commission), the four governments (in an agreement signed on October 30, 1946) redefined the functions of the Commission and provided for a central Secretariat to serve both the Commission and its auxiliary bodies, the Caribbean Research Council and the West Indian Conference.⁷

The setting up of a similar permanent regional body in the Southwest Pacific was agreed between Australia, New Zealand, and the United Kingdom at the British Commonwealth Prime Ministers' Conference in 1946, and the two latter governments initiated in that year a regional health center in Fiji. A six-power conference of forty delegates (Australia, New Zealand, United States, United Kingdom, France, and the Netherlands) met at Canberra on January 28, 1947, and signed on February 6 an agreement constituting the South Pacific Commission. This body, modeled closely on the Caribbean Commission, will advise the governments on the economic and social welfare and advancement of the

⁴ *Report of the Anglo-American Caribbean Commission to the Governments of the United States and Great Britain for the Years 1942-43* (Washington, 1943); *Ibid.*, 1945 (Washington, 1946).

⁵ *The Times* (London), July 14, 1943, p. 8, cols. 3-5.

⁶ Great Britain, Parliament, Cmd. 6513 (1944).

⁷ U. S. Department of State, *Bulletin*, July 28, 1946, p. 165; November 17, 1946, p. 920. See also *Report of the West Indian Conference, Second Session, St. Thomas, Virgin Islands, United States of America, February 21 to March 13, 1946*, U. S. Department of State Publication 2615, Conference Series 88; and *Report of the Caribbean Commission to the Governments of the French Republic, the Kingdom of the Netherlands, the United Kingdom, the United States of America, for the Year 1946* [Port-of-Spain, Trinidad, B.W.I., 1947]. The text of the agreement is printed as Appendix A of the Report of the Caribbean Commission and also in Great Britain, Foreign Office, Miscellaneous No. 13 (1946), Cmd. 6972.

non-self-governing territories of the area (east of but including Dutch New Guinea) with its total population of some 2,000,000 people.⁸ Membership in such a body is provided for in the Pacific trusteeship agreements. The beginnings in recent years of a somewhat similar regional development in Africa are marked by the technical discussions and conferences between the British, French, and Belgian colonial administrations.

2. THE NEW REGIONALISM, AN OLD PATTERN

Such regional commissions differ in important respects from an international supervisory body such as the Mandates Commission. The two types of commission are quite distinct as regards constitution, structure, and membership; as well as in their relations to governments, their functions, and the time levels at which they operate. The Mandates Commission was a central commission of experts which reviewed and judged the past year's events in relation to the carrying out of the terms of the trusteeship, and it did this for a small number of individual territories scattered all over the world.⁹ The regional advisory commissions of governments, on the other hand, are concerned with the current year and also plan developments for the future. They supervise and coordinate the common concerns of a whole region, and not merely an odd territory here and there.

⁸ See Emil J. Sady, "Report on the South Seas Conference; With an Analysis of the Agreement Establishing the South Pacific Commission," U. S. Department of State, *Bulletin*, March 16, 1947, pp. 459-65; also *Current Notes*, Department of External Affairs, Canberra, Vol. 18, No. 2, February, 1947 (text of agreement). The text of the agreement is also printed in Great Britain, Foreign Office, Miscellaneous No. 9 (1947), Cmd. 7104.

⁹ The petition system, however, prevented the Mandates Commission from remaining entirely aloof from current events subsequent to the last annual report before it. Under the United Nations Charter petitions assume a more important place than under the Covenant. Moreover, the system of visits of inspection gives the Trusteeship Council a more direct interest in events of the current year in trust territories.

CHAPTER VI

COMPARISON OF MANDATE AND NON-MANDATE ADMINISTRATION

Carrying still further the examination of the working of the mandate system from a comparative point of view, we come to the most difficult problem of all, that of comparing mandate with non-mandate administration of dependencies. Dr. Moresco, in a work published by the League Institute of Intellectual Cooperation in 1939, doubted whether any really scientific comparison was possible. "The assumed superiority of Mandate over Colonial government," he wrote, "has never been the subject of serious and unprejudiced inquiry and therefore is at least not proved."¹ M. Orts, at the sixth session of the Mandates Commission, had pointed out that several decades of experience of the system were necessary to test it before any judgment could be made as to the superiority of the system in every respect to that of "colonies administered in full sovereignty." Professor Quincy Wright made a serious attempt at such a comparison in 1930. He concluded that the mandate system "has advantages from the standpoint of the inhabitants of the area and of the world in general" over both Eastern Hemisphere types of colonies, protectorates, spheres of interest, etc., and the less precise Western "system of self-determination qualified by the Monroe Doctrine, sporadic interventions, quasi-protectorates, receiverships, and occasional annexations by the United States. . . ."² But he added that if more territories were put under mandate "the Commission's administrative duties might swamp its scientific and investigatory functions."³ These general judgments were preceded by a detailed analysis of the grave difficulties in the way of making any such comparison. "The effect of government systems," he pointed out, "is slow. Sound judgment must be based on achievement not through years or even decades but through centuries."⁴ Moreover, he added, "every area differs from every other

¹ *Colonial Questions and Peace*, *op. cit.*, p. 179.

² Quincy Wright, *Mandates under the League of Nations* (Chicago: The University of Chicago Press [1930]), Part IV, p. 585.

³ *Ibid.*, p. 588.

⁴ *Ibid.*, p. 547.

in many respects besides the presence or absence of the mandates system." Such scattered statistics as are available are woefully inadequate: ". . . perhaps no more can be said of them than that on the whole they seem not unfavorable to the system." Population statistics are almost useless for comparative purposes and not much more can be said for health or education data. But while "strict statistical demonstration is impossible," the mandates system, he thought, "has developed policies favorable to native health, agriculture, education, and security."⁵ Of public order he does not feel able to say more than that mandates have shown as good results as "colonies." As for "international harmony" his finding was that the mandate system had stability and that "it seems unlikely that any individual state will attempt to upset the system by illegal conduct."⁶ The assumption that one part of the Covenant was likely to remain immune from aggression and breach of law by force reflected the prevailing optimism that the League and peace had come to stay.

I. THE OPEN DOOR

In the matter of economic equality the mandate system as interpreted and applied by the Mandates Commission, which showed perhaps greater activity in this sphere than in any other, undoubtedly gave results. In Dr. Benjamin Gerig's view, expressed in 1930, it was "undoubtedly the most effective instrument yet devised to make the Open Door effective."⁷ But Professor Rappard of the Mandates Commission, in his introduction to Dr. Gerig's book, pointed out that it was "well nigh impossible to reply with assurance and accuracy" to the question "what would be different in the day to day economic life of the mandated territories were their administration neither subjected to an international control nor bound to respect and enforce the principle of equal opportunity . . .?" In fact the open-door principle was already applied in the nineteenth century by a number of colonial powers, particularly Britain, Germany, and Holland. It moreover applies as a legal obligation

⁵ *Ibid.*, p. 567.

⁶ *Ibid.*, pp. 578-81. See above, Chapter I, on the relation of trusteeship to the state system.

⁷ Benjamin Gerig, *The Open Door and the Mandates System; A Study of Economic Equality before and since the Establishment of the Mandates System* (London: G. Allen & Unwin, Ltd., 1930), p. 199.

to all territories which fall within the Conventional Basin of the Congo under the Berlin African Act of 1885 as revised at St. Germain-en-Laye in 1919. But it is open to question whether the open door is as effectively open in such territories as it has been in the mandates. A recent and thorough "study of economic policy under mandate" has arrived at the conclusion that "in every country under B mandate foreign countries have a larger share in the import trade than in the adjoining colonies ruled by the same Power, even if these colonies are more or less under an 'open door' regime."⁸ The import figures given in this work are impressive, but they possibly require still more exhaustive analysis, and the export figures give a much less clear picture. Nevertheless, it is possible that the open door might be applied more effectively in the Conventional Basin of the Congo, i.e., the area in which that principle was accepted as a legal obligation under the Berlin Act, if its application were subject to some kind of regular international supervision. Such supervision could be provided in various ways and not merely through machinery of the Mandates Commission type.⁹

Certain members of the League Committee on the Problem of Raw Materials in 1937 suggested that the open-door regime as secured by treaty in the Congo Basin and under certain of the mandates "should be extended as regards the development of natural resources to other territories that are sparsely populated and whose resources are inadequately developed." The Committee pointed out that these proposals were "not designed to alter the political status of colonial territories, for example, by converting them into mandated territories." Some members thought the object might be secured by an international convention without alteration of the political status. The Committee contented itself, however, with the proposal that powers concerned "should be invited to make unilateral declarations to the effect that they will facilitate . . . development . . . as far as possible consistently with the duties which they owe to the local inhabitants."¹⁰

⁸ Charlotte Leubuscher, *Tanganyika Territory; A Study of Economic Policy Under Mandate* (London, etc.: Oxford University Press, 1944), pp. 173-75.

⁹ *Ibid.*, p. 3.

¹⁰ "Report of the Committee for the Study of the Problem of Raw Materials Appointed by the Council on January 26th, 1937," L.N. *Official Journal*, XVIII (1937), p. 1239. A similar proposal was made by M. Van Zeeland in his report of that year. *International Conciliation*, No. 338 (March, 1938), p. 105. For a further discussion of the open door, see below, Chapter XV, section 5.

2. AMERICAN AND MANDATED SAMOA

Detailed comparisons have been made of mandate administration with colonial administration in two cases—Samoa and New Guinea—where close similarity of conditions makes such a comparison feasible.

Only for the New Zealand mandated part of the Samoan archipelago was an annual report available. The annual report by the Government of New Zealand on *The Mandated Territory of Western Samoa*, e.g., for the year 1938, is an imposing document of upwards of 20,000 words, with a number of statistical tables and a great deal of detailed information under twenty-four chapter headings corresponding to the Mandate Commission's questionnaire. The general picture that emerges is that of a rapidly increasing population (40 per cent increase in the decade 1926-36) which is economically secure and well contented. The Mandates Commission which examined the report at its last (thirty-seventh) session was well satisfied.¹¹ The political troubles of earlier years between the Government, the Mau, and the anti-Mau were a thing of the past. In brief, as the report says, "the year has been quiet."

In the matter of publicity at least the mandate scored heavily in comparison with the American half of the archipelago, since the annual report to the Navy Department on American Samoa was not published "for reasons of economy" though it exists in manuscript. But the single page (the space normally given) devoted to American Samoa in the annual report of the Secretary of the Navy for the same year, 1938, gave a picture that seemed not less satisfactory than the one in the voluminous New Zealand report.

The present population [the Navy Department reported] represents an increase of more than 100 per cent since 1900 . . . due to the cessation of internecine warfare, and the sanitary and medical work of the medical officers of the Navy.

The native political situation is excellent and the naval island government has continued to function efficiently over a peaceful and contented people, following an established policy of "nonexploitation of the natives, non-alienation of lands, and Samoa for the Samoans." The present system of government is recognized by all the more intelligent Samoans as best suited to the preservation of native customs and the communal form of living to which they are accustomed. The island government is solvent. . . .¹²

¹¹ P.M.C. Min. XXXVII (1939), p. 12.

¹² *Annual Report of the Secretary of the Navy for the Fiscal Year 1938* (Washington: Government Printing Office, 1938), p. 30. See also *American Samoa; A General Report by the Governor* (Washington: Government Printing Office, 1927); and the report by the U. S. Office of Naval Operations, entitled *Report to United Nations on Guam, American Samoa and Other Island Possessions Administered by*

Such a bright picture might be discounted a little if it were not fully supported by the judgment of a competent anthropologist. Dr. Keesing,¹³ in his penetrating study of the two systems operating side by side in the Samoan archipelago, found the main reason for the success of the American system, especially as to native affairs, in its "comparative freedom of action and personal absolutism." And the main criticism he records against the New Zealand mandate system was the difficulty which the Samoans had of knowing where "power and responsibility" was localized as between Apia, Wellington, and Geneva. The uncertainty of local New Zealand officials as to their powers seemed to the Samoans a sign of weakness. "With real Polynesian personalism they look to tangible leaders and symbols of authority. . . . Perhaps no less comprehensible form of government could be devised for a Polynesian people than the impersonal mandates system."¹⁴ A New Zealand Royal Commission of 1927 investigated the native grievances but found complaints against the system of government unjustified. The Commission ignored, however, in Dr. Keesing's view, the fact that the whole trend of the government was "to replace Polynesian personalism with an impersonal system having formalised channels of authority—a mechanism exceedingly foreign to the Samoan mind."¹⁵ But the American problem, he pointed out, was simpler than that of New Zealand owing to such factors as the smaller population of the American part, its greater isolation, and the continuity of the Navy control; and he warns against "hasty comparisons between the success or otherwise of government in the two jurisdictions."¹⁶ Yet despite these judgments his own personal preference seemed to be for the mandate system on the assumption that though it had got off to a rather weak start in Western Samoa, it would justify itself.¹⁷

the Navy Department (OPNAV-P22-100), July, 1946; Prepared by Assistant Chief of Naval Operations (Island Government). This latter report, comprising 56 printed pages, was transmitted to the United Nations by the Department of State under cover of a note dated August 16, 1946, which was presented to the Secretary General by the United States representative by letter of August 19, 1946. U. S. Delegation to the United Nations, Document US/A/13; US/NSGT/2, August 19, 1946.

¹³ Felix M. Keesing, *Modern Samoa: Its Government and Changing Life* (Stanford University, California: Stanford University Press, 1934), pp. 102-4

¹⁴ *Ibid.*, p. 104.

¹⁵ *Ibid.*, p. 160.

¹⁶ *Ibid.*, p. 199.

¹⁷ *Ibid.*, p. 109: "In the larger view, however, the student may well consider that for such a territory, in which a native people stands over against non-native groups of diverse nationality, and where there are many points of historical and potential conflict, an international responsibility and control is much more satisfactory than direct annexation by any one power."

3. AUSTRALIAN PAPUA AND MANDATED NEW GUINEA

Despite their similarity in population, resources, and geographical factors, any hasty judgments as between Australian mandated New Guinea north of the Owen Stanley Range and Australian Papua south of it are no more justified than in the case of the two Samoas. Here the mandate system has on the whole worked to the satisfaction both of the Mandates Commission and of Australia. The Australian Minister of External Affairs (Dr. H. V. Evatt), in explaining to Parliament on October 14, 1943, the Australian-New Zealand plan for an international regional organization for territories in the Southwest Pacific area, referred to the Mandates Commission as one part of the League's work which had been "crowned with great success," and went on to refer to Australia's recognition "that the future of native races is a subject of legitimate international interest."

But if mandated New Guinea has on the whole been a successful and satisfactory administration, so also has Australian Papua which Sir Hubert Murray set out in 1907 to make a "model administration" based on the highest ideal of the "sacred trust." He was himself a pioneer in the use of anthropology as a practical instrument in administration; and he was fully aware, as he wrote in his annual report for the year 1907, of the "abysmal difference between the stone-age man and the twentieth century." But he made it the aim of the administration—to cite the words of his report—to "elevate an almost uncivilised native race without any exploitation of their land . . . or labour."¹⁵

If the Australian annual reports on New Guinea to the League¹⁶ since 1920 have given a faithful and meticulous public accountancy, so have the Papuan annual reports; they began under the British administration of Papua as far back as 1889, and under Sir Hubert Murray from 1907 became well-known, and much-looked-for, annual state papers.²⁰

The only authoritative comparison between the two types of administration in the island of New Guinea which has yet been attempted is contained in a report, made on the very eve of the war, which is one of

¹⁵ *The Cambridge History of the British Empire* (New York: The Macmillan Company; Cambridge, England: At the University Press, 1929-), Vol. VII (1933), Part I, p. 516.

¹⁶ See Commonwealth of Australia, *Report to the Council of the League of Nations on the Administration of the Territory of New Guinea from 1st July, 1938, to 30th June, 1939*, Parl. Paper F.843 (1940), 158 pp., folio.

²⁰ See, for example, Commonwealth of Australia, *Territory of Papua; Report for the Year 1937-38*, Parl. Paper No. 165, F.6597 (1939), 45 pp., folio.

the few important state papers on mandates.²¹ ". . . the principles of native administration in Papua," the report stated, "include most of the beneficent intentions of the Mandate system and in some cases carry them out more strictly than the Mandate would require." "The methods of the Papuan Administration are, if anything, more favorable to the development of the natives' individuality than those of New Guinea." The administrative services of New Guinea are "more elaborate" and "better equipped." While Papua received an annual grant of £44,100, New Guinea paid her own way, largely because of the output of gold. But taxes in Papua were generally lower.²² In the matter of native welfare, the report pointed out, "there is a higher minimum wage and a shorter period of indenture in Papua than in the Mandated Territory." It added that "the limits of native labour supply have been more nearly approached in New Guinea than in Papua, and some New Guinea employers would like to be allowed to recruit in Papua."²³ The Commission also found native educational policy further advanced in Papua than in New Guinea.²⁴

4. COMPARISONS IN AFRICA

Similar comparisons between mandated and non-mandated territories could be made for Africa, but they would be of even more doubtful value. The societies of the Pacific are simpler and their insular environments far less differentiated. The variants in the case of Africa as between different native societies, their territorial environments, and the impact on them of foreign cultures are far greater than in the Pacific. It is

²¹ Commonwealth of Australia, *Report of Committee Appointed to Survey the Possibility of Establishing a Combined Administration of the Territories of Papua and New Guinea*. . . . Parl. Paper No. 230, F.5621 (1939).

²² *Ibid.*, pp. 19-29. The Chairman, Sir Frederick Eggleston, indicated his own attitude with respect to the mandate system in a personal opinion in a footnote (p. 29). "I would not see any objection in ordinary circumstances to Australia voluntarily agreeing to hold Papua under mandate terms." But he added: "In the present state of world tension, however, Australia could not be expected to give up her right to fortify Papua." The report was signed on August 26, 1939.

²³ *Ibid.*, pp. 6 and 15. The Australian Government announced on September 22, 1944, its decision to abolish indentured labor in the mandated territory. See below, Chapter XVI, section 3, on New Guinea during the war.

²⁴ *Ibid.* Cf. Stephen W. Reed, *The Making of Modern New Guinea; With Special Reference to Culture Contact in the Mandated Territory* (Philadelphia: The American Philosophical Society, 1943. Issued in cooperation with the International Secretariat, Institute of Pacific Relations), p. xviii: "No plan has been prepared for a system of native schooling designed to assist the kanaka in adjusting to his new, partly Europeanised, partly detribalised, situation."

true that nearly all African territories—all south of the Sahara—share a number of common problems, resulting from their survival as primitive tribal societies in a shrunken world of sovereign states, and from the impact on them of the policies, cultures, science, trade, and industry of more advanced societies. But even in this respect there are many important differences between one territory and another. The general principles of Article 22 and of the mandates are not applied *in vacuo*, but within the framework of an existing administrative tradition—French, British, Belgian, South African. This means that a principle or a rule is applied somewhat differently in each territory. Important differences may develop rapidly even between adjoining territories administered by the same power, as witness the divergences mentioned above which arose in a few years between Papua and New Guinea. Different histories, divergent administrative practices and traditions, population, climatic and economic factors, the impact of war on the territory—all these make it impossible to measure with any accuracy the effects of comparatively minor variants due to differences between mandate and non-mandate administration.

It is possible in a number of cases to study side by side over a period of years the mandate annual report to the League, and the parallel annual report made for an adjoining dependency to the national government and parliament.²⁵ Both were an accounting for trusteeship; and though the reports were to different instances, both are open to public scrutiny and criticism. But well-founded comparative judgments based on this wealth of published material are notoriously hard to make. The well-known difference in prosperity between West African and East African dependencies, for example, has been often ascribed to divergent government policies and attitudes towards the native peoples. Yet twenty years of mandate administration in Tanganyika failed to wipe out this kind of basic difference between an East and a West African territory. Tanganyika just before the war (1937) had a foreign trade, per head of population, of only 13s.6d., or one fifth of that of the Gold Coast (a British dependency), which had £3"5"5" per head. Lord Lugard has pointed out how irrelevant such comparisons really are as criteria for judging results obtained under different administrative systems. The differences are due, he shows, to basic economic and cli-

²⁵ In the case of the United Kingdom all such colonial annual reports were sent regularly to the League of Nations Library at Geneva under instructions from London contained in the Colonial Regulations. See below, Chapter XII.

matic factors—to the differences between the sparsely populated, largely pastoral territories of East Africa, and the densely populated West African territories with their exceptionally favorable conditions of soil, climate, and rainfall.²⁶

As between Tanganyika and the Gold Coast, it was rain, soil, and cocoa, and not the mandate system, which were responsible for the difference of economic prosperity. Rain, soil, and cocoa have combined under good administration to raise in the Gold Coast a native society of peasant proprietors to "a general condition of unprecedented, and indeed undreamt of, prosperity," and have increased "the value of its trade to a level more than ten times higher than that of forty years ago."²⁷ But the British mandate administration in Tanganyika even under the less favorable climatic conditions of an East African territory has been able to check this former German colony's trend towards a plantation economy by fostering an economy in which a landed native peasantry plays an increasing part. An experienced South African journalist who visited the territory in 1938 reported: "The whole export of groundnuts and nearly the whole of cotton, with one-third of the coffee production of Tanganyika, is in native hands; and so is the whole export of hides and skins. . . . More than one-third of the Tanganyika natives produce for export on their own land."²⁸ Togoland under British mandate, on the other hand, as a West Coast territory, shares the Gold Coast's favorable conditions. It runs as a narrow ribbon of land along nearly the whole length of the eastern frontier of the latter. "The territory is administered as an integral part of the Gold Coast in accordance with the provisions of the Mandate."²⁹ It has a sixth of the Gold Coast's area; but its highest recorded export of cocoa was 16,451 tons in 1938,

²⁶ F. D. Lugard, *The Dual Mandate in British Tropical Africa*, 2d edition (Edinburgh and London: W. Blackwood and Sons, 1923), p. 399.

²⁷ Great Britain, Colonial Office, *Annual Report on the Social and Economic Progress of the People of the Gold Coast, 1938-39*, Colonial Reports—Annual, No. 1919. "Cocoa, however, is the life-blood of the Gold Coast, because it is wholly a peasant industry. . . . The Gold Coast . . . produces about 42 percent of the world's crop." (P. 50)

²⁸ G. L. Steer, *Judgment on German Africa* (London: Hodder and Stoughton, Ltd., [1939]), p. 290. Cf. S. H. Frankel, *Capital Investment in Africa; Its Course and Effects* (London, etc.: Oxford University Press, 1938), p. 282: Taking into account the 70 per cent arid area and "the effect of political uncertainty on settlement and capital investment in the territory, its progress does not compare unfavourably with that of other African colonies."

²⁹ Great Britain, Colonial Office, *Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of Togoland under British Mandate for the Year 1938*, Colonial No. 171 (1939), p. 1.

or hardly a twentieth part of the Gold Coast's export.⁸⁰ This is an interesting fact but has probably little or no bearing on differences between mandate and non-mandate administration.

5. UNIVERSAL ELEMENTS OF THE SYSTEM

Despite the difficulty of making any scientific comparison between mandate and non-mandate administration it seems reasonable on the evidence to sum up as follows: (1) In the matter of the welfare of native peoples, which is the real heart of the system, it has produced results that compare favorably with the higher standards achieved in national dependencies. Also, as we have seen, it has stimulated the latter to do still better. The hope of the official British Commentary on the Covenant in 1919, that "the maintenance of a high standard of administration in the mandate territories will react favourably wherever a lower standard now exists,"⁸¹ seems on the record to have been justified. (2) In the matter of the open-door principle, the mandated territories appear to have set a higher standard than was to be found elsewhere. But while this helped world trade and gave industrialized countries equality of access to raw materials, its effect on native welfare was less clear. A too rigid application of the open-door principle might indeed be shown, if the point were thoroughly investigated, to have been detrimental to native development.⁸² (3) Only the native-welfare part of the mandate system was accepted as universally valid. It was this part of the system, and no other, which was being slowly generalized throughout the world before the war by the efforts of the governments, through their own national tradition of trusteeship where that existed and through the League of Nations and the International Labor Organization by means of international conventions and by the steady pressure of publicity.

⁸⁰ *Ibid.*, p. 72.

⁸¹ Cmd. 151 (1919).

⁸² The United Nations Charter recognized this point by providing that economic equality should be without prejudice to native interests. See below, Chapter XVII.

CHAPTER VII

UNCERTAINTIES AND INCONSISTENCIES—THE ELEMENTS REJECTED BY NATIONAL PRACTICE

Other aspects of the mandate system, however, including certain of its underlying ideas and assumptions, showed no such power to win support or assent and had little influence outside the mandated areas. These elements were: (*a*) defense—the non-fortification provisions of Article 22 (“B” and “C” mandates); (*b*) the uncertainty of the political status of a mandated territory and its effect on peace and international stability; (*c*) the uncertain personal status or “nationality” of the inhabitants of “B” and “C” mandates; and (*d*) the assumption that mandated territories must ultimately become separate sovereign states.

These elements were not clearly related to native welfare; they might, indeed, be inimical to it. They are part of the wider problem of peace and security. They were accepted in 1919–20 by League members for the ex-enemy territories under mandate, perhaps because their real significance was not then as clear as it was to become after two more decades of continuous experience and discussions between the Mandates Commission and the governments—followed by war. The result is that there has been no inclination on the part of any power to extend these elements of the mandate system to its national dependencies. Such extension would probably indeed have been considered by most if not all of the powers responsible for non-mandated areas as incompatible with the general principles and objectives of the Covenant. These elements have always been regarded as integral parts of the mandate system. It is now clear that they have formed a barrier to any general extension of the system as a system—apart, that is, from its native-welfare aspects.

I. DEFENSE AND NON-FORTIFICATION

Article 22 of the Covenant contained a number of clauses which were described in its sixth paragraph as “safeguards . . . in the interests of the indigenous population.” These included such matters as freedom

of conscience and prohibitions of the slave trade, the liquor traffic, and the arms traffic. But the "safeguards" also included the following clause: "the prevention of the establishment of fortifications or military or naval bases and of military training of the natives for other than police purposes and the defense of territory." The anomaly of the clause emerges more clearly if it is considered side by side with the next article of the Covenant. In Article 23 (b) the members of the League "undertake to secure just treatment of the native inhabitants of territories under their control." "Just treatment" is nowhere defined. At first sight one might suppose that Article 22 could be construed as more or less indicating what is meant by this term. But League members never accepted any such construction, since they could not agree, nor persuade their peoples to agree, that the inhabitants of defenseless dependencies could possibly be safeguarded by an absolute prohibition against fortifications and bases such as the Covenant imposed on "B" and "C" mandated territories. This view was all the more strongly held because of scruples against arming and training native peoples even for their own home defense. This traditional policy of some of the colonial powers, especially Britain, the Netherlands, and South Africa, was to lead to strong criticism during the Second World War on the ground that, as in Malaya, it eased the path of the aggressor. The Covenant permitted "military training of the natives" for defense of the territory.¹

The actual texts of each of the "B" and "C" mandates repeated in perfectly clear terms this prohibition against establishing military or naval bases or erecting any fortifications in the territory (e.g., Tanganyika, Article 4; Nauru, Article 4). They repeated also the obligation as to military training of the natives, i.e., in the words of the Tanganyika mandate, not to "organise any native military force in the territory except for local police purposes and for the defence of the territory." It was not explicitly said that these defense forces could not be used outside the frontier, if defense strategy made this necessary. But the Mandates Commission at its third session² ruled out any participation by the natives in defense beyond their frontiers. Even voluntary enlistment of natives for service in any military corps which was "not permanently quartered in the territory and used solely for its defence" would be, it decided, a violation of the mandates (other than the French man-

¹ The defense provisions of the United Nations Charter reversed those of the Covenant. See below, Chapters XVI and XVII.

² P.M.C. *Mins.* III (1923), pp. 196-97; and L.N. Document C.519 (1).1923.VI.

dates). The replies of the governments, in response to a request from the Council that they express their views on the subject, were in general that they were not enlisting natives in this way, and that "in deference to the wishes" of the Commission they would not do so in the future. But they emphasized that this must not be taken as implying any renunciation of their sovereign rights in their own territory or in protected territory.³ The French African mandates contained an additional clause providing that the troops raised in the territory for local defense might, "in the event of general war, be utilized to repel an attack or for the defence of the territory outside that subject to the mandate."

The "A" mandates—Palestine and Syria—do not preclude the use, with the consent of the mandatory, of local forces for defense of the territory outside its actual frontier. The mandatory could maintain his own armed forces in the territory, and use railways and communications of the territory for the passage of his armed forces and the carriage of fuel and supplies.

The prohibitions in relation to defense thus applied to ex-enemy territory were a curious example of the habit of envisaging the next war in terms of the last. The drafters of the Covenant had in mind German plans to train black armies and establish an impregnable fortified Middle Africa as a base for avenging their defeat in the first World War.⁴ With their minds full of such German plans, the Allies proceeded to apply to themselves a ban that would have been appropriate for Germany if she had returned to Africa. The result was twofold: The mandated territories became an element of strategical weakness, rather than of strength for both the collective security system of the League and the security of its mandatories. And the ultimate attack by the aggressor was thus facilitated. Moreover, the interests of the natives were sacrificed. It would probably not be easy now to persuade the natives of any mandated territory overrun by the Axis that the lack of fortifications and bases in the territory was a "safeguard in the interests of the indigenous population" and not an open invitation to an aggressor. In the Pacific the invitation was made even more pressing by the ban against fortifications in insular possessions in the Pacific inserted in

³ The replies were collected in L.N. Document C.317.1926.VI. As a matter of strict legal interpretation, the view of the Mandates Commission seems untenable. It was never accepted by the governments and ran counter to an interpretation of the Supreme Council. See below, Chapter XVI, section 1.

⁴ The plans were summarized in 1918 in an Imperial War Cabinet memorandum, the gist of which was "From Central Europe through Central Africa to World Dominion." The text is in Lloyd George, *op. cit.*, Vol. 1, pp. 127-29.

Article 19 of the Washington Conference Treaty for Limitation of Naval Armament, 1922. This was the only case where the non-fortification provision was extended to dependencies other than mandates. By this self-denying ordinance the British Commonwealth and the United States denied to themselves what in fact they allowed Japan to take; for the Japanese mandate became a perfect cloak under which Japan was able later to construct secret bases directed against the Philippines, the Indies, and Australia. The Mandates Commission had little doubt that Japan was establishing naval and air bases; but this could only have been prevented if the other great powers had been willing to intervene by force. Meanwhile the Commission vigilantly watched the other mandatory powers to see that they at least kept to the rule.⁵ But this situation was only part of a wider League problem; for the mandate system was designed to function inside the general framework of a collective security which it was assumed would preserve peace.

(a) *Sanctions and the Neutral Conception of Mandates*

It was characteristic of the somewhat negative attitude of the Commission that it never seemed to have envisaged the possibility of mandated territories becoming involved in League sanctions. The mandatory powers, in accordance with the express desire of most League members, included the mandated territories in the sanctions against Italy in 1935-36. This action confronted the Commission with a *fait accompli*. Its Italian chairman initiated a debate on the matter in the twenty-ninth session (June, 1936). He objected that sanctions were in violation of the economic-equality clause of Article 22; that the mandates had "suffered from the application of sanctions," i.e., through loss of trade with Italy. To involve the mandates in sanctions was inadmissible, he argued, since they "could benefit only from the advantages of peace." This said, he walked out of the Commission, never to return. His views did not prevail, but no reference to sanctions was made in the report to the Council and the matter was finally shelved at the next session of the Commission.⁶ The last session of the Commission after the outbreak of the war in 1939 ended, as we have seen, on the same negative note.

The purpose of Article 22 as expounded by some of the commentators and writers on mandates was to create a kind of international island en-

⁵ See below, Chapter XIII, section 6.

⁶ P.M.C. *Min.* XXIX (1936), pp. 168-71, and XXX (1936), pp. 16-20.

tirely surrounded by international law, a sort of neutral no man's land from which sovereignty had faded out—at least temporarily—leaving it virtually free from the contamination of imperialist and nationalist wars between the powers.⁷ A demilitarized zone or neutralized area was likely to be a signpost pointing to the danger of involvement in war. There was a kind of tribal magic in this kind of reliance on a formula as protection. It fitted the totem poles that were pictured on the walls of the League Council Chamber. The Maoris of New Zealand, when they went fishing, took with them a totem pole, and if the fish did not bite the totem was whipped. "Geneva," the "League," the "Covenant," were the subject of magic thinking. On them were hung texts and rules, forms and procedures, facts and statistics. But there was an almost universal lack of interest in the ultimate political and psychological assumptions on which rested all the cloud-capped towers of the League. There were whole libraries on the law and procedures of the Covenant; but no studies of the implicit assumptions and generalizations about human nature and behavior in international politics that underlay every sentence of the Covenant and all the treaties and agreements connected with it. Only in such an atmosphere could there arise this neutral theory of mandates which conceived them as under the protection of law but outside of politics and power and, therefore, of war. It was the underlying and unexplored assumption on which were based suggestions made from time to time to place mandates under the direct administration of an International Authority or to extend the existing mandate system to all dependencies. But the assumption that either a mandatory power, or the League International Authority itself, could be responsible for mandates without providing for their defense, was never valid. No legal magic could have taken mandates out of politics and

⁷ The idea was not wholly new. The Berlin Act contained an abortive neutrality clause (Article 10), optional in character, which aimed at keeping the African territories, to which it applied, out of wars waged by the powers. This was dropped in the revision of 1919. See Annex X, below. Arthur Berriedale Keith, *The Belgian Congo and the Berlin Act* (Oxford: Clarendon Press, 1919), pp. 169-72.

See also L. Oppenheim, *International Law; A Treatise*, 5th edition, edited by H. Lauterpacht (London, etc.: Longmans, Green and Co. [1937, 1935]), Vol. 1, pp. 186-87 (note 7). "It is arguable that to involve a mandated area in its mandatory's wars is so contrary to the whole intention of Article 22 of the Covenant that no belligerent who is bound by that article could insist upon treating the mandated area as within the region of war. . . ." But, as the note goes on to point out, this conception does not square with the fact that some of the mandates permit the mandatory to use his mandated area for warlike purposes (cf. the following articles in the mandates: Article 17, Palestine; Article 2, Syria; Article 3, French Togoland and Cameroons).

power, since they remained on the planet as part of human society, subject inevitably to human conflicts and aggressions.

If the assumption needed any disproof the Second World War was to supply it. One aggressor used a Pacific mandate as a base for attack on the three other mandates in that region. Germany organized or plotted war in or against Syria, Iraq, and South-West Africa. All of the mandates, save inland Ruanda-Urundi, were swept by war or had war on their coasts. All without exception were legally at war.⁸

This part of the mandate theory broke down because it was a departure from the lessons of past experience. The widely accepted elements of Article 22—trusteeship, supervision of the trustee's agents, the primacy of native welfare, and the open door—were all based on past experience and national practice. But non-fortification had never been national practice. On the contrary, that practice had always followed the ancient principle (as set forth, for example, by Adam Smith in 1776) that "the first duty of the sovereign [is] that of defending the society from the violence and injustice of other independent societies."⁹ Dependent territories had thus frequently served as outlying fortresses to protect a nation's shores and its sea-roads and to contain the forces of the enemy. A similar rôle was designed by the United States for the eight Atlantic bases leased from or given by Britain and located in British territories. These were described by Mr. Cordell Hull on October 26, 1940, as "strategically located naval and air bases which will enable us to create a protective girdle of steel along the Atlantic seaboard of the American continent." Before the end of the war a similar girdle had been extended across the Pacific. These bases, Mr. Hull indicated, were intended to serve also as bases for all American powers. This conception was the exact reverse of the negative thought underlying the non-fortification clause of Article 22.

(b) *League Defense of League Dependencies*

The full implications of this more positive view are a matter for the future.¹⁰ But it is clear that if the League had had title to the mandates,

⁸ See below, Chapter XVI, section 1, on the bringing of the mandates into the war.

⁹ Adam Smith, *Wealth of Nations*, Book V, Chapter 1.

¹⁰ The sequel was the defense provisions of United Nations trusteeship, and the United States strategic-area trusteeship in the Pacific; also the Mead Committee Report (U. S. Senate, 79th Congress, 2d Session, Report No. 110, Part 7, pp. 17-18) that the United States could no longer rely on defense at the water's edge but needed overseas bases to ensure that "the lanes of commerce to raw materials

and had been directly responsible for their administration, its task would have been far more than the simple one assigned to it by most of the writers who in the past envisaged such a solution, namely, administration, economics, and welfare. It would have faced exactly the same political and defense problem as any state. As in the case of any state, "Defense" would have been item number one on its budget. In translating the Swiss francs, or other currency, voted for the defense of its domain, into men and machines, it would have faced a whole set of problems not faced by any large state. These problems would have arisen from the fact that the League, not itself possessing the territorial basis, population, resources, and industry of a great power, would have had to depend on borrowed power—borrowed men and borrowed machines. Under the conditions of modern warfare the League could have found little defensive power within the dependent territories themselves, since by their nature they would be defense liabilities rather than sources of power. The attempt to carry such a heavy liability, while leaning on borrowed power, could hardly have failed to undermine the League's stability. For its political authority and influence, and its ability to borrow power, depended on the steady support of its member states; and that support was notoriously uneven, variable, and unpredictable. The heavy liability of a colonial domain might have been expected to multiply the stresses and strains in the international structure caused by such shifting foundations. Ill-defended territories round which the wall of power crumbles are dangerous to peace. It is not fanciful to suppose that the time might soon have come when a harassed Secretary General would have recalled ruefully Disraeli's famous phrase: "These wretched colonies are a millstone round our necks."

2. UNCERTAINTY OF MANDATE STATUS

According to mandate theory the system should have promoted international stability. The Commission did its best to ensure certainty and stability by following a steady line of policy, by using its powers with restraint, and by upholding the authority of the mandatory power in the

required for war production remain within its control or in friendly hands." Such bases were secured for 99 years in the Philippines by the agreement signed on March 14, 1947. See above, Chapter I, footnote 9. Lord Lugard left a penciled slip among his mandate papers to the effect that "many of the older British Colonies were acquired as naval supply depots and were absolutely necessary in order to maintain for all the world the freedom of the seas."

territories. But its success in this direction was limited by the effect of certain elements of legal and political uncertainty inherent in the mandates.

(a) *The Issue of Sovereignty*

On the legal side, twenty years of inconclusive speculation among international lawyers as to where sovereignty was really lodged did not help matters. Uncertainty could have been ended only by a settlement of this issue one way or the other—either by an agreement that sovereignty in the “B” and “C” mandates lay with the mandatory power subject to certain servitudes or that it lay in the League.¹¹ But such stability would not have been ensured by the latter solution unless it were made quite clear that a mandatory power was not a mere tenant at will, but had legal security of tenure, and was fully protected by law from eviction, provided always that it continued to observe the conditions of the trust.

(b) *Political Uncertainty and National Security—1919*¹²

The element of political uncertainty was due partly, but not wholly, to this legal difficulty. The idea that a mandated territory was a kind of no man’s land outside any national sovereignty, and that the condition was essentially of a temporary character, was an open invitation to propaganda and political pressures exercised through the League and outside it. Mandates were something left in the kitty for Germany once she regained her place as a great power or for late-comers to the colonial table. It was just this fear that led the British Dominions in 1919 to oppose the mandate system for South-West Africa and the German South Pacific islands. In view of the vital strategic interests of South Africa, Australia, and New Zealand in these frontier regions the risk of mandate uncertainty seemed too great.¹³ General Smuts pointed out to President Wilson on January 27, 1919, that the Germans had engineered from South-West Africa a revolt in the Union. Mr. Hughes, Australian Prime Minister, pointed out that “any strong Power controlling New Guinea controlled Australia,”¹⁴ which was only separated

¹¹ See also below, Chapter XVI, section 5, and article on “International Trusteeship” in *British Year Book of International Law*, 1947.

¹² For the historical background of the uncertainty involved in mandate status, see above, Chapter I.

¹³ Lloyd George, *op. cit.*, Vol. I, pp. 122–24; also p. 519. For a more detailed discussion of this aspect, see below, Chapter IX, section 4.

¹⁴ *Ibid.*, p. 519.

from the island by a few miles of sheltered water. Mr. Massey, Prime Minister of New Zealand, drew a parallel between such national frontier regions and American frontier territories. "What," he asked President Wilson, "would Washington and Hamilton . . . have done or said had it been suggested that a mandatory Power, or even the Colonists themselves as mandatories of a League of Nations, should be given charge of the vast territories in North America not at that time occupied?"¹⁵ The view that annexation, and not a mandate, was the best solution for South-West Africa and New Guinea had in fact been advanced by G. L. Beer, chief of the Colonial Division of the American delegation and alternate member of the Commission on Mandates, in a Peace Conference brief made public in 1923.¹⁶ Both in the case of South-West Africa and of New Guinea, the sudden and unexpected German occupation in 1884, on Bismarck's orders, had forestalled attempts by the colonists, on grounds of national security, to occupy this part of their frontier.¹⁷ "In November 1884 the British flag was hoisted at Port Moresby for the fifth time on the soil of New Guinea";¹⁸ but it was just too late to prevent Bismarck's sudden annexation of the whole area north of the Owen Stanley Range.

Revived German colonial claims had already by 1926 created such uncertainty regarding the future of Tanganyika that it became necessary for Sir Donald Cameron in December of that year, at the opening of the

¹⁵ *Ibid.*, p. 523.

¹⁶ G. L. Beer, *African Questions at the Paris Peace Conference; With Papers on Egypt, Mesopotamia, and the Colonial Settlement* (New York: The Macmillan Company, 1923).

His recommendations were that South-West Africa should be incorporated in the Union of South Africa: "For various valid reasons," he wrote, "the mandatory principle is inadvisable and really inapplicable in this case." (P. 443.) *German New Guinea* (but not the adjoining islands) should be "transferred to the British Empire on the understanding that it is to be added to Papua, the Australian section of New Guinea." He added that the mandatory principle was not advisable "on account of the fact that it adjoins Australian Papua." (P. 457.) His reason for recommending the mandate principle for the islands adjoining New Guinea, as well as for Western Samoa, was that Japan could not be trusted in the North Pacific and that "without offending Japan it would be impossible to discriminate between her and New Zealand." (P. 456.)

¹⁷ Cape Colony, in May, 1884, after long discussion with London, decided to take over control of the coastline from the Orange River to Walfisch Bay. But Bismarck had already acted. See S. E. Crowe, *The Berlin West African Conference, 1884-1885* (London, etc.: Published for the Royal Empire Society by Longmans, Green and Co. [1942]), pp. 39-41.

¹⁸ *British New Guinea (Papua)*, Handbooks Prepared under the Direction of the Historical Section of the Foreign Office, No. 88 (London: Published by H.M. Stationery Office, 1920).

new Legislative Council of the territory, to make a sharply worded declaration of government policy:

There is no provision in the Mandate for its termination or transfer. It constitutes in fact an obligation, and not a form of temporary tenure under the League of Nations. This obligation does not make British control temporary, any more than other Treaty obligations (such as those under the Berlin and Brussels Acts . . .) render temporary British control over Kenya or Uganda. . . .

I make this statement with the full authority of His Majesty's Government. And let this not escape the notice of all who hear it or may read it. . . . Tanganyika is a part of the British Empire and will remain so.¹⁹

Already the danger of political uncertainty frightening away capital had forced the League Council, on the advice of the Mandates Commission, to declare that transfer or cessation of the mandate could not take place without the safeguarding of existing rights.²⁰ Such statements did not prevent German and Italian delegates from taking advantage of the annual debate on the mandates in the Sixth Committee of the League Assembly, to press strongly the temporary character of the mandate in opposing any kind of union between Tanganyika and adjoining territories. At the tenth Assembly in 1929 the Italian delegate, supported by his German colleague, insisted several times that the essential characteristic of the mandate was its "temporary nature."²¹ Representatives of the mandatory powers protested that such statements could only create a condition of "dangerous uncertainty."

(c) *The Classical Case of South-West Africa*

The classical case of the difficulties created by the legal and political uncertainties of the mandate regime is that of South-West Africa. What happened in this territory is the standing warning of what is likely to happen as a result of the uncertain legal and political status of a mandated or trust territory, given the presence of an important minority owing open or secret allegiance to a foreign power. The warning is relevant to some at least of the ex-enemy territories affected by peace

¹⁹ Tanganyika Territory, *Proceedings of the Legislative Council*, First Session, 1926-27 (Dar es Salaam: Printed by the Government Printer), p. 9. Similar declarations were made by the British Government in the period 1935-38.

²⁰ L.N., *Official Journal*, VI (1925), p. 1363.

²¹ *Records of the Tenth Ordinary Session of the Assembly, Meetings of the Committees, Minutes of the Sixth Committee (Political Questions)*, L.N., *Official Journal, Special Supplement*, No. 81 (Geneva, 1929), pp. 23-28. See below, Chapter XI, section 2.

settlements after the Second World War. What was to happen in South-West Africa was fully predicted in advance by Mr. Balfour in a memorandum written during the Paris Peace Conference in 1919. He was of the opinion that a movable mandatory might supply a perpetual incentive to agitation and intrigue. Taking the German settlers in East Africa as an illustration, he wrote—

if they were certain that they were going to be permanently British or French or American [they] would endeavour to make the best of a system which they might wish to be different. But if by stirring up difficulties among the natives, by constant propaganda . . . they could hope to induce the League of Nations to turn out the existing Mandatory, and to substitute Germany in its place, they would never rest: and German East Africa would never settle down.²²

(The sequel so far as Tanganyika was concerned was revealed at the first session of the United Nations Trusteeship Council by the United Kingdom representative, Mr. Ivor Thomas, on April 21, 1947. When Germany was admitted to the League in 1925 the German settlers could return to the territory by virtue of the open-door provision of the mandate. The German Government adopted a policy of subsidized migration for subversive purposes. In 1932, before the Nazi regime, the German Government "frankly began to avow its designs on Tanganyika." The Nazi Party was established in the territory in 1933 and nearly all the German settlers were enrolled in it. "By 1936 the Germans had already designated officials for the day when the territory would be taken over. . . . On the outbreak of the war almost the whole German community was interned as a precautionary measure.")

Seventeen years after the Balfour memorandum was written, in 1936, the situation thus foreseen had developed to a point where the South-West Africa Commission reported to the Union Government that—

It is common cause in South West Africa that uncertainty as to the political future of the country is the basic reason for the dissatisfaction now prevalent. It retards the development of the country, makes investors of capital shy and has an unsettling effect on the inhabitants. . . . The smooth functioning of the Mandate system becomes practically impossible if such interference in the affairs of a Mandated Territory continues.²³

²² The text of the memorandum is given by Lloyd George, *op. cit.*, Vol. 1, pp. 556-57.

²³ Cited in Union of South Africa, *Report Presented by the Government of the Union of South Africa to the Council of the League of Nations concerning the Administration of South West Africa for the Year 1939* (U.G. No. 30-1940), p. 23.

The last South African report to the League, for the year 1939, gave a detailed and fully documented history, based on reports of commissions of investigation and the archives of the local Nazi societies, showing how the German agitation developed step by step in South-West Africa from 1919 to the outbreak of the war.²⁴ The Union found itself confronted finally with a highly organized German colony, welded into "one solid block." It acted wholly under the instructions of the German Government and held the territory open for Germany's return. The German settlers, 10,000 in number, regarded the mass Union naturalization under the Union Act of 1924 as not affecting their allegiance to Germany. They had never taken any individual oath of allegiance to South Africa, but had sworn "unconditional obedience" to the head of a foreign state.²⁵ Under the Defense Act, at the outbreak of war, they were therefore "not deemed to be citizens" but Germans on parole. No one was permitted to serve in the armed forces during the war unless he had sworn an oath of "true allegiance to His Majesty King George. . . ." ²⁶ The result was an insistent demand among the non-German settlers in the territory (numbering about 20,000), as well as from the Union itself, for the "administration of the Territory as a Fifth Province of the Union subject to the terms of the Mandate." The view of the Constitutional Commission in 1936 that there was "no legal obstacle" to such a step was endorsed by General Smuts in a speech in the South African Senate on April 3, 1944.²⁷

3. UNCERTAINTY OF PERSONAL STATUS—NATIONALITY

(a) *Present Position*

By the cession of the territories in the treaties of peace the inhabitants lost any nationality they may have had without acquiring any new one.

²⁴ *Ibid.*, pp. 14-31.

²⁵ *Ibid.*, pp. 20-26.

²⁶ *Ibid.*, pp. 30-31.

²⁷ Senate of South Africa, *Debates (Official Report)*, April 3, 1944. "The feeling exists," General Smuts said, "that the Mandate system has probably served its purpose and that at the next Peace Conference a new arrangement will have to be arrived at. . . . I do not consider there is any political difficulty, even under the existing Mandate conditions, against the incorporation of South West Africa. . . . The Mandate says we can govern and administer South West Africa and make laws for South West Africa as if it is a part of the Union. . . . no statutory or political difficulties can exist in regard to the incorporation of that territory, subject always, however, to the fact that a report is made to the League of Nations and under the supervision of the League of Nations." (Pp. 928-29.) The idea of incorporation by the Union was rejected by the United Nations General Assembly. See below, Chapter XVII.

Indeterminate status as regards nationality and allegiance affects all the "B" and "C" mandates. As Lord Lugard has put it, "the person 'protected under mandate' shares with the owner of an estate 'un titre précaire' subject to contingencies of revocation, rendition or resignation of the mandate, and has no definitely legalised status and rights."²⁸ The situation in "B" and "C" mandates is governed by a decision of the League Council, based on a report of the Mandates Commission submitted in August, 1922.²⁹ The Commission recommended that the native inhabitants of "B" and "C" mandated territories should be granted "a national status wholly distinct from that of the nationals of the mandatory Power." It recommended that the latter should give the inhabitants "a designation such as 'administered persons under mandate' or 'protected persons under mandate' of the mandatory Power." While it rejected "compulsory naturalisation, by a single act, of all the inhabitants" (with the express exception of Germans in South-West Africa), it agreed to permit individual voluntary naturalization. Thus, in accordance with these provisions, the native inhabitants of the Cameroons "are properly described as British protected persons, natives of the Cameroons under British Mandate."³⁰ As such (and under Article 127 of the Treaty of Versailles) they are entitled to diplomatic protection when outside the mandated territory. Mere residence in the territory does not qualify for naturalization as a British subject.

Irrespective of legal forms, none of the native populations of the "B" and "C" mandates could be regarded by any stretch of imagination as having any nationality now or the prospect of acquiring any for a long period of time. One of the territories—New Guinea—is in a pre-tribal, stone-age level of political organization. None is above the tribal level. The geographical conditions of all except two or three of them would in any case seem to preclude independent sovereignty—if in the future, when they might form a single community, there were still room for more separate sovereignties on the planet.

²⁸ *Op. cit.*, p. 56. In the case of the "A" mandates, a definite nationality or its equivalent has been created; in Iraq, by Iraq law of October 9, 1924; in Palestine, by British Order in Council of July 24, 1925. The latter created a Palestinian citizenship which is equivalent to nationality. In the case of Syria and Lebanon, Article 3 of the mandate "recognised the existence of distinct nationality." See *Oppenheim, op. cit.*, 5th edition, Vol. I, pp. 193-95.

²⁹ *National Status of the Inhabitants of the Territories Under B and C Mandates*, L.N. Document C.546.1922.VI; and *Official Journal*, IV (1923), p. 604.

³⁰ Great Britain, Colonial Office, *Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of the Cameroons under British Mandate for the Year 1938*, Colonial No. 170 (1939), p. 7.

(b) *Allegiance and the Extension of Mandates*

Being without nationality, and without hope of attaining any except through naturalization, even the educated natives can have only the ambiguous status of "persons protected (or administered) under mandate"—which was the description suggested by the Mandates Commission. They are thus condemned to a position of inferiority if they travel abroad. In the case of British territories under mandate, the inhabitants, not being British subjects, though they enjoy British protection abroad, "must register as aliens even in British countries."⁸¹ The net practical effect of this indeterminate status was thus to deny inhabitants of a "B" or "C" mandated territory any home in a nation or state and to reduce them to the condition of wards under more or less perpetual tutelage. One effect was that while privileges under commercial treaties usually extended automatically to all citizens, including the inhabitants of a national dependency, such privileges did not extend to the inhabitants of "B" and "C" mandates unless this was expressly stated in the text. To ensure that the inhabitants should not be left in an inferior position the Mandates Commission found it necessary to watch this point.⁸²

The vitally important point of allegiance was not discussed in any of the many unofficial proposals made for a general extension of the League mandate system. It has always formed a grave political barrier to such an extension. Any such change would have involved the existing allegiance and citizenship of scores of millions of peoples in over a hundred dependencies in the Pacific, the Atlantic, the Indian Ocean, the Mediterranean, Africa, and Asia. They would have been offered, in return for

⁸¹ *The British Empire: A Report on Its Structure and Problems by a Study Group of Members of the Royal Institute of International Affairs* (London, etc.: Oxford University Press, 1937. Issued under the auspices of the Royal Institute of International Affairs), p. 134.

Lord Lugard in his notes made the point that naturalization *en bloc* "could not be accepted by the British Government since it would invite the premature grant of the status of British subject to the inhabitants of all the British African protectorates." Lugard Manuscript.

The British Prime Minister, in a statement to Parliament on January 23, 1946, summed up the position as regards "nationality" in Tanganyika, Togoland, and the Cameroons as they were under the mandate and would continue under the new trust agreement. "They are not British Colonies and the inhabitants are not, therefore, as such British subjects. They are, however, and will continue to be, 'British protected persons' of exactly the same status as the inhabitants of any British Protectorate not under mandate or trusteeship." Great Britain, Colonial Office, *Trusteeship Territories in Africa under United Kingdom Mandate* (London [1946]), Cmd. 6840.

⁸² See below, Chapter XV, section 1.

the loss of a more or less well-understood personal relationship, the impersonal, uncertain, and distasteful status of "wards of the court." Such a vast change in constitutional and personal relations would have required the consent of the nations concerned and the consent of the native populations, and there has never been any evidence that the consent of either could in fact be secured.⁸³

4. MANDATES AND SOVEREIGNTY—NATIONAL POLICIES OF INTEGRATION—REGIONALISM

The underlying assumptions of the League (and United Nations), both political and psychological, are of great importance but have never been subjected to any systematic analysis. Underlying Article 22 was the assumption of independent national sovereignty for mandates. The drafters of the Covenant took as their starting-point the general notions of "no annexation" and "self-determination." Accompanying these in the minds of some of them was the further vague implication that union, or even close association of a dependency with the metropolitan country, was questionable from the point of view of the interests of the native peoples and the peace of the world. The ultimate consequences of these ideas and their compatibility with the two broad objects of the Covenant—peace and a more highly integrated world—were never seriously discussed. The scheme was solely for ex-enemy territories and was judged to be good enough for them.

The assumption of sovereignty was immediate for "A" territories (as the terms of Article 22, paragraph 4, indicated). The broad general effect in the case of the "A" mandates was pointed out by Norman Bentwich:

What is most remarkable in the law as to nationality in the mandated territories detached from Turkey is that in place of the Ottoman subjection there are now five new nationality systems. . . . There has been no such national particularism in the Middle East for nearly two thousand years.⁸⁴

Palestine remained, at the end of the Second World War, the only "A" mandate which had not yet achieved sovereignty.

For the "B" and "C" mandates, the assumption of sovereignty was ultimate rather than immediate, and by the nature of things it was in any

⁸³ On the trend towards closer union, with extension of the full citizenship of the metropolitan power to dependent peoples, see below, this chapter, section 4(d).

⁸⁴ *The Mandates System* (London, etc.: Longmans, Green and Co., 1930), p. 79.

case unattainable in some at least of the territories for a very long period of time.⁸⁵

(a) *The Permanent Mandates Commission and Sovereignty for Mandates*

The Mandates Commission consistently upheld the theory of ultimate independent sovereignty. It made no attempt to minimize the effect of the vague words of the Covenant in reference to the ultimate destiny of "B" and "C" mandates. It assumed that sovereign independence, and not merely "self-government" and "autonomy," was intended by the Covenant. The assumption of ultimate sovereignty thus did not remain a purely theoretical one but had numerous practical effects on the administration and development of the "B" and "C" territories. It was a factor in preventing the closer union of Tanganyika with neighboring territories, the administration of South-West Africa as a fifth province of the Union, the administrative union of New Guinea and Papua. It had an influence of some practical importance on other British as well as the French and Belgian mandates.

(b) *Regional Union versus Mandate Sovereignty*

In practice the Mandates Commission consistently acted on the assumption that the words in Article 22 of the Covenant about the peoples of "B" and "C" mandates being "not yet able to stand by themselves" implied the goal of sovereign independence. The Commission therefore consistently challenged on every possible occasion any policy or legal text that seemed to imply directly or indirectly that the mandatory state possessed or could possess sovereignty. For the same reason it looked askance at any proposal that seemed to involve too close legal and administrative relationships between a mandate and neighboring territories. The Covenant itself said that "C" mandates "can be best administered under the laws of the Mandatory as *integral portions* of its territory." The "B" mandates for French and British Togoland and Cameroons (Article 9) permitted the mandatory to administer them as an "integral part" of his *adjoining* territory—not of the metropolitan country itself.⁸⁶

⁸⁵ E.g., as the Eggleston Report pointed out (*op. cit.*, p. 12), society in New Guinea is *pre-tribal*, without recognized chiefs. The natives in New Guinea and Papua "have not risen above a stone age of culture; they have no social organization transcending the village or small group of villages; most of these villages have no political structure and in most cases there is no recognized chief."

⁸⁶ See also below, Chapter X, footnote 18.

The omission of similar words from the Tanganyika mandate was not accidental since Tanganyika was regarded as big enough to be administered apart from adjoining territories. The "B" mandates expressly authorized "the administrative union of the mandated area with neighbouring territory, subject only to the stipulation that measures adopted to that end do not infringe the provisions of the mandate."³⁷ Thus Tanganyika and Ruanda-Urundi are linked in customs and postal unions with neighboring territory of the mandatory power. But the Mandates Commission consistently frowned upon further steps in the direction of closer administrative or constitutional union.

The outstanding case was that of Tanganyika, where closer union was under discussion from 1926 onwards. After much investigation the British Government informed the Commission on September 2, 1932, that it did not think the time was "yet ripe for the introduction of closer political or constitutional union." But it considered that "the Conference of Governors of the different territories of East Africa should be increasingly utilised for the purpose of ensuring the closest co-operation and co-ordination in all matters of common interest to those territories." The majority of the Mandates Commission, despite strong minority dissent, showed a very critical attitude toward these discussions, which it implied threatened the destruction of the mandate. It expressed concern that the Governors Conference should not assume "executive responsibilities."³⁸ Lord Hailey, himself a member of the Commission, has expressed the view that "the Permanent Mandates Commission would appear to have shown itself somewhat unduly susceptible in its criticism of the few measures of coordination so far effected between Tanganyika and the other areas, and the validity of its conclusions as to the incompatibility of amalgamation with the terms of the mandate seems at least debatable."³⁹

The whole question of sovereignty versus "closer union" was thrashed out with reference to the mandated territory of New Guinea and Australian Papua in the Eggleston Commission's Report of 1939.⁴⁰ The Commission held that on practical grounds union was not desirable at present. But they were divided on ultimate goals. The chairman and

³⁷ Hailey, *African Survey*, p. 217.

³⁸ P.M.C. Min. XXIII (1933), p. 189. See also Great Britain, Colonial Office, *Papers Relating to the Question of the Closer Union of Kenya, Uganda, and the Tanganyika Territory*, Colonial No. 57 (1931). See below, Chapter XIV, section 5.

³⁹ *African Survey*, p. 185.

⁴⁰ *Op. cit.*, pp. 25-36.

the representative of New Guinea considered that the mandate gave the mandatory the power to set up "one administrative and legislative organization . . . to serve both territories." But they accepted the view that legally the goal of New Guinea must ultimately be independence. They were led on by the logic of their argument into the following positions: (1) Ultimate separation and independence need not prevent union now with Papua. (2) "If independence is given to one it cannot be denied to the other."⁴¹ (3) "The Mandate system will fail in its main purpose if it encourages the maintenance of small units; it should not oppose the beneficial trend towards larger units." The minority member (the Hon. H. L. Murray, then Official Secretary of Papua) saw the matter differently. His chief ground for opposing closer union was that "ultimate independence, however far in the future, should be the aim of native policy in New Guinea. In Papua, however, the policy is directed in the opposite direction—not towards independence but away from it towards closer association with Australia and ultimate absorption in the Australian Commonwealth."⁴²

(c) *The Doctrine of Balkanization*

If the law, despite the obscurity of its wording, said and meant sovereignty for "B" and "C" mandates, then sovereignty might be the principle ultimately applied in some at least of these mandates. But for non-mandated territories, the *law* of the mandates (if it did indeed mean sovereignty) was irrelevant; what counted was the rightness or wrongness of the political *principle*. If the principle of sovereign independence was right, then the logic seemed inexorable. If it was right for New Guinea, then it should be right for Papua; if for Western Samoa, then for American Samoa; if for the Japanese mandate, then for American Guam; if for Tanganyika, then for Kenya; if for Ruanda-Urundi, then for Belgian Congo.

But here we may recall Burke's saying that "Circumstances give, in reality, to every political principle its distinguishing colour and discriminating effect. The circumstances are what render every civil and political scheme beneficial or obnoxious to mankind." Any such theory of general balkanization, by the creation of many new sovereign states,

⁴¹ See above, Chapter VI, section 3.

⁴² See below, Chapter XVI, section 3.

ran counter both to international circumstances and to national policies based on the potent principles of integration and partnership.⁴³

(d) *National Policies of Integration*

The policies of all the expanding states in modern history have been based on the principle of integration, or of self-government and autonomy combined with some form of political union, federal or otherwise. This has taken different forms in different "Empires," but the principle has everywhere been the same. Belgium, though it opposed white settlement and adopted the policy of the "Congo for the African," regarded the inhabitants of the Congo as "of Belgian nationality," though without Belgian citizenship.⁴⁴

Since the last war, Dutch dependencies have moved by progressive stages from the autocratic regime that prevailed up to 1918, towards the conception of a Netherlands Commonwealth of four equal parts: Holland, Netherlands Indies, Curaçao, and Surinam, each part to have domestic autonomy and an equal say in Commonwealth affairs.⁴⁵

Before the Second World War the policy of France was described as one of "association" without any color bar. Advanced colonies, such as Northern Algeria, were part of France with representation in the metropolitan parliament.⁴⁶ During the war, by a series of declarations, France moved officially towards the new political conception of the "French Union," with all parts of France overseas drawn into a relationship of organic unity with the mother country; regional federations in Indo-China and other areas; local autonomy, and local representative institu-

⁴³ As a result of lengthy discussions at the San Francisco Conference in 1945, the doctrine of compulsory balkanization was abandoned and the "basic objective" for trust territories (including mandates) was redefined as "*self-government or independence* as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned. . . ." (Article 76.)

⁴⁴ L.N. Document C.54 (a).M.45.1922.VII. See also Reports of Colonial Commission to the Belgian Senate, e.g., for 1936 (cited in Frankel, *op. cit.*, pp. 289-90): "Rien de ce qui peut être fait par un noir ne doit être confié au blanc. Le Congo est un pays qu'il faut développer avec le noir et par le noir et nous n'entendons pas y admettre l'établissement d'une barrière de couleur."

⁴⁵ The stage was set for the new policy by the Declaration of Queen Wilhelmina on December 6, 1942. The first great step to joint cooperation on a basis of equality between the Netherlands Indies and Holland was marked by the signing on March 25, 1947, of the Linggadjati Agreement (also referred to as the Cheribon Agreement) between the Republic of Indonesia and the Netherlands. *The Times* (London), and *New York Times*, of March 26, 1947.

⁴⁶ Maresco, *op. cit.*, pp. 260-61.

tions, combined with representation in an Assembly of the Union in Paris.⁴⁷

The trend of these policies is in line with the long-established trend of British policy to extend the Commonwealth principle systematically to all parts of the Empire. It is the policy of free association—freedom for its own sake, and as the only basis for a durable union. Commonwealth and Empire, by virtue of the common allegiance, have always shared the common status of "British citizenship," and as such all parts are entitled to and guaranteed by the Courts "the civil liberties of Englishmen." The fixed policy for the dependencies, as set forth by successive governments and endorsed by Parliament, is one of full extension of parliamentary democracy: in short, self-government combined with local autonomy and free partnership with the mother country in the British Commonwealth of Nations.⁴⁸

The policies of the great powers, Russia, the United States of America, and China, whose main expansion has been by land, have followed the general line of assimilation, and of incorporation within the federal union of all territories that could be incorporated. American policy was governed by Article IV, Section 3, of the Constitution, devised to deal with the two thirds of the future forty-eight states that were to pass through

⁴⁷ Declaration by General de Gaulle, March 23, 1945, *New York Times*, March 24, 1945, p. 9. The steps towards this conception (now embodied in the French Constitution) included (a) a statement by the French Committee of National Liberation, December 7, 1943, on "a new political status" for Indo-China "within the French community" (text in *United Nations Review*, Vol. IV [1944], p. 16); (b) General de Gaulle's speech before the Brazzaville Conference on January 30, 1944, in which he spoke of the Empire as France's "springboard for her liberation," and as entering upon an era of progressive self-government and common citizenship with France (*ibid.*, p. 64); and U. S. Department of State, *Bulletin*, March 11, 1944, pp. 239-40). See also Jean de la Roche et Jean Gottmann, *La Fédération française; Contacts et civilisations d'outre-mer* (Montreal: Editions de l'Arbre, 1945). The text of the constitution of the French Union embodying these conceptions is in the *New York Times*, October 1, 1946. See, for an analysis of its ideas, France, Secrétariat d'Etat à la Présidence du Conseil et à l'Information, Direction de la Documentation (La Documentation française), *Notes documentaires et Etudes*, No. 314 (Série française—XCVIII), May 29, 1946. The four "old colonies" (Guadeloupe, Martinique, Guiana, and Réunion) became departments of metropolitan France as from January 1, 1947. As provided in the constitution, "the Assembly of the French Union is composed half of members representing metropolitan France and half of members representing the overseas departments and territories and the associated States."

⁴⁸ H. Duncan Hall, "The British Commonwealth and Trusteeship," *International Affairs* (Royal Institute of International Affairs, London), Vol. XXII (1946), pp. 199-213; and "The British Commonwealth as a Great Power," *Foreign Affairs*, Vol. XXIII (1945), pp. 594-608. See also W. Y. Elliott and H. Duncan Hall, eds., *The British Commonwealth at War* (New York: A. A. Knopf, 1943); and L. S. Amery, *Thoughts on the Constitution* (London, New York: Oxford University Press, 1947).

the intermediate colonial stage of Territories, until Congress, at its discretion and in its own good time, finally admitted them to the Union as full States. How this continental system—with its various elements such as sharing the common American citizenship, the basing of the territorial constitution on the American model, representation of the territory by a non-voting representative in Congress, and taxation by Congress for Federal purposes—was applied with little change to the overseas territories, is described by W. F. Willoughby in his *Territories and Dependencies of the United States* (1905). "The ultimate result always in view," he wrote, "was that of a single union of commonwealths all enjoying the same general form of government, possessing the same political rights and privileges, and together embracing all territory in any manner under the sovereignty of the United States." He finds a "remarkable homogeneity" in the acts for the temporary government in Hawaii, Puerto Rico, the Philippines, the Canal Zone, and so forth—"the same provisions and even the same language, that was used in the acts of fifty, seventy-five or one hundred years ago."⁴⁹ Though the extension to territories of different race might slow down the full application of the policy (and even, as in the case of the Philippines, replace it from the outset by a policy of independence), the translation of the theory overseas, Willoughby pointed out, had affected it little. It remained for non-contiguous territories what it had been for territories of the mainland—a policy to be carried out unless circumstances rendered it quite impracticable.⁵⁰

In the more than forty years since these words were written the relations of the United States with its own overseas territories have remained substantially unchanged, with the single great exception of the "scheduled independence" given to the Philippines in 1946 under the Act of 1935. This exception was, however, of such magnitude that it came to be regarded by the American public, and largely indeed in other countries, as *the* American policy towards dependencies.⁵¹

⁴⁹ Willoughby, *op. cit.*, pp. 7-10. Cf. Roosevelt, *op. cit.*, "I believe that those administrators unconsciously, in hammering at the Americanization program, were thinking of Puerto Rico as a territory that would eventually be taken into the Union as the western states had been."

⁵⁰ Willoughby, *op. cit.*, p. 12.

⁵¹ Independence for the Philippines carried with it under the subsidiary agreements long-term trade preference arrangements and a 99-year tenure of over a score of American bases. The United States Pacific Islands trusteeship agreement of 1947 was a reaffirmation of the traditional policy of integration; it brought all the islands within the United States defense frontier.

There is thus a marked contrast between the strict mandate theory of independent sovereignty, and the concept of integration worked out by the national states in relation to their dependencies. But the contrast was perhaps unduly heightened because the Mandates Commission was left to work by itself, without having the advantage of supervising the mandates within the framework of the wider and more positive League activity in respect of the welfare of dependencies in general, which, as we have seen, was envisaged in 1919, but never realized in practice.

PART II

BACKGROUND AND PERSPECTIVE

CHAPTER VIII

THE FOUR ROOTS OF THE MANDATE AND TRUSTEESHIP SYSTEMS

I. THE NEW PERSPECTIVE—1919 AND 1945

In Paris in 1919, as in San Francisco in 1945, the nations stood on high ground which formed a watershed separating one era from another. From such high ground the past stands out in a new perspective.

The new vantage ground in 1945 was still highly unstable and the future as seen from it had never been less discernible. The volcanic forces were still active that had burnt up the old League and molded a new, destroyed three of the great powers of the old League, thrust into the front ranks of the United Nations three—the United States of America, the Union of Soviet Socialist Republics, and China—which had hardly played leading parts in the League, and weakened other powers, both great and small. On the human side aspirations for an ordered life struggled against deep anxieties, irrationality, mass phenomena. On the technical side the immense new power and range of weapons of destruction—guided missiles, jet planes, world-ranging superplanes, and the atomic bomb—changed geographical relations and frontiers.

One change in the political landscape lay in the fact that the most distant, obscure, and unimportant dependent areas were no longer distant, obscure, and unimportant. Many of them had become, for strategic or economic reasons, vital frontier provinces of one power or another. Many had awakened to find themselves new pivotal points on world sea and air routes commanding world arteries, vital bases and landing grounds for the two great oceanic-air powers, the United States and the British Commonwealth of Nations,¹ or desired by other powers for their strategic importance.

¹ See the plan put before the Senate Naval Affairs Committee on February 14, 1946, by the U. S. Navy Department, for a defense system involving 53 bases—33 Pacific and 20 Atlantic-Caribbean.

All these and other changes as seen from the new vantage ground cast fresh light on past policies and ideas regarding dependent or non-self-governing areas. The fresh light was thrown not merely on the foreground of the recent past, the period since the first World War, but back still further to the late eighteenth century when the combination of the forces of industrialism, nationalism, and science first began to emerge in modern form. And as always the clearer view of the past gave a clearer view of the meaning of the present and the trends of the future.

In this new light it became possible to see more distinctly the several main streams of history, from the eighteenth century onwards, converging slowly into the League mandate system. It was more than ever clear that the coming of that system was not due, as the popular myth had it, to the sudden welling up in the barren desert of European diplomacy of transatlantic idealism, bearing with it the new gospels of "no annexation" and the welfare of native peoples.

{ The main tributaries that united to produce the mandate system were: *first*, the working of the state system and the balance of power which produced in the frontier zones between the powers expedients such as the condominium or joint international regime in which an individual or one or more states have been designated by a group of states, or given a "mandate," to administer an unstable area (this, the principal source of the mandate and trusteeship systems, has been examined in Chapter 1); *second*, British, American, and French conceptions of the rule of law and colonial freedom and self-government; *third*, the conception and tradition of trusteeship—national trusteeship—springing from Edmund Burke and the British Parliament; *fourth*, the application to Central Africa and Turkey of the principle of the collective responsibility of the powers (the "concert of Europe"), and the concerted application to Africa on a regional basis, by the Berlin and Brussels African Conferences, of international standards (e.g., standards derived from national practice, such as the rules against the slave and liquor trade). }

Though these four elements were all present long before 1919 they could not converge into a workable system of international trusteeship until the creation of the League of Nations itself. Nor was such a system feasible until a great war had provided an area of free experimentation in the shape of ex-enemy territories, on the absorption of which into existing states the powers could not easily agree, and for which they preferred to devise a new form of administration. An extension of the system had to wait upon a second world war which repeated the same

conditions: a new general international organization; a fresh surge of idealism; and fresh areas detached from enemy states, on the disposal of which the powers had much more difficulty in agreeing than they had in 1919.

2. SELF-GOVERNMENT AND THE RULE OF LAW

The second and third of the four historical roots of international trusteeship—self-government with the rule of law, and the conception of the sacred trust—were taken over into the mandate system in 1919 as fully matured political conceptions embodied in political institutions with many generations of thought and experience behind them. To the idea of self-government the mandate system added nothing new. To the idea of trusteeship it gave greater definition, a place in a world covenant, and fresh applications in practice.

Mandates and international trusteeship were not a new species. They were rather a variant, an extension of something old and well tried. They inherited and put to use positive and fruitful "colonial" principles and experiences, "colonial" forms of administration, "colonial" officials trained in "colonial" services.² Thus an experienced observer, crossing over from an ordinary dependency in Africa into an adjoining mandated area administered by the same power, would be hard put to it to find any real distinctions between the one and the other. Laws and ordinances, administrative forms, basic ideas and principles, would look much the same on both sides of the frontier. In both he would find the rule of law, the personal liberty and the security of property of the individual, the principle of trusteeship, the practice of indirect rule, the open door for trade, the rendering of account to the mother country and to the world in the form of published annual reports.³ The label on the outside might be different, but the contents would be the same; and slight differences of color and flavor would turn out to be traceable usually to factors quite unrelated to differences between mandate and non-mandate administration.

² President Wilson clearly recognized this in his speech on February 14, 1919, in which he presented the text of the new Covenant to the Peace Conference. *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, p. 214. The powers represented there, he said, had shown "humane impulse" in their colonies, many of which had been "lifted into the sphere of complete self-government." "This is not," he added, "the discovery of a principle. It is the universal application of a principle." What the powers had done separately in their separate administrations they now united in doing by "their common force and their common thought and intelligence."

³ See above Part I, Chapter VI.

Even at Geneva, where the distinctions between mandates and national dependencies were more clearly visible than they could be on the spot, the observer would find abundant evidence of the continued operation of the historical connection between the two forms. In working out and applying standards of good government in mandated areas the members of the Permanent Mandates Commission drew continually on what they judged, both from first-hand experience and from study, to be the best colonial practice.⁴ It was the members of the committee like Lord Lugard with the greatest practical experience of dependencies who had the greatest influence on its work. { While it was true that the mandate system had no small influence on colonial government, it is more easy to find tangible evidence in the records of the Commission of the influence of colonial government on mandates. }

Self-government is the central positive conception of the mandate system set out in Article 22 of the League Covenant. This has not always been recognized. The essence of the article has often been described as trusteeship with independence as the goal of the trust. But this is a negative emphasis. The positive conception of the article is surely *education for self-government*. Trusteeship and tutelage in themselves say nothing. Independence by itself says nothing; it could mean a despotic state or a modern puppet regime devised by a totalitarian power. But the self-government of a free people standing on its own feet as a result of a process of education says everything. This was the full liberal intent of the Covenant, even though its phrasing was clumsy and the word "self-government" was not used. The point is clearer in the Charter where the primary emphasis is upon self-government and progressive development towards it.

The principle that colonies should learn to "stand by themselves" (in the phrase of the Covenant) and that once they reached that point they should be left by the mother country to govern themselves, grew out of the expansion of Britain into North America in the seventeenth and eighteenth centuries. The American Revolution itself grew out of the colonial self-government which began in the first decade of British Virginia and New England. The early eighteenth-century constitutions of the Thirteen Colonies became the model for the self-government granted by the United States in the nineteenth century to its own western territories as well as to overseas territories like Hawaii. The still further

⁴ For a typical example, see a discussion in the last (thirty-seventh) session of the Commission, December, 1939. *P.M.C. Min. XXXVII (1939)*, p. 25.

advanced model of responsible government, in which ministers were no longer nominees of the colonial governor but leaders of a parliamentary majority, was meanwhile being applied in Canada and other British colonies, following Lord Durham's Report of 1839.

Nor was the principle of self-government confined to colonies of British stock. It was officially accepted quite early in the century as applying to Asiatic and even African peoples.

Thus, in 1824, one of the greatest British administrators in India, Sir Thomas Munro of Madras, declared that it was the duty of Britain "to train Indians to govern and protect themselves."⁵ The same view was expressed by Henry Lawrence of the Punjab and Rajputana some twenty years later. Earl Grey, the great Secretary of State for the Colonies, concerned with the putting into effect of responsible government in Canada and Australia, declared himself in favor of the gradual training of the still primitive tribal peoples of West Africa "until they shall grow into a nation capable of protecting themselves and of managing their own affairs"; and the same doctrine was put forward in 1865 by a West African Royal Commission.⁶

But though the official doctrine had become self-government for dependencies, the achievement of that goal by primitive African tribal societies—or even by highly advanced oriental societies, such as India and Ceylon, which are pluralistic in character—was inevitably far slower and more difficult than had been anticipated in the mid-Victorian age. Administrators had to penetrate primitive Africa painfully from the Coast, a process that required many decades. New techniques of government had to be developed such as that of indirect rule, that is, the development and adapting of existing native systems to humane and civilized standards.⁷

Only mechanically minded people without any understanding of the immense complexities of human society even among primitive peoples could have expected progress towards self-government and higher political unity to be anything but slow. Even under the most favorable

⁵ Quoted by A. D. A. de Kat Angelino, *Colonial Policy*; abridged translation from the Dutch by G. J. Renier, in collaboration with the author (The Hague: M. Nijhoff, 1931), Vol. I, p. 13.

⁶ Quoted by Eric A. Walker, *The British Empire: Its Structure and Spirit* (London, etc.: Oxford University Press, 1943. Issued under the auspices of the Royal Institute of International Affairs), p. 51.

⁷ Indirect rule had been applied by Sir Stamford Raffles at the end of the eighteenth century in South East Asia and later in Fiji, which became part of the British Empire in 1874 at the request of the King of Fiji.

conditions, as in British Colonies inhabited by British stock, the process has been slow. Australian and South African colonies took over a hundred years to achieve political unity and to hammer out for themselves their own national constitution. The Philippines, after over three hundred years of Spanish rule and Catholicism, still needed half a century of American rule before achieving national unity and self-government. Anyone who expects tribal societies to advance as fast or faster can have no understanding of the nature of such societies. What the phrase "tribal society" means in political terms—even in a more advanced culture than that of middle Africa—is graphically illustrated in the description by Mr. Harold Ingrams, Resident Adviser in the Hadhramaut, of the "general peace treaty"—to run for three years—which was arranged in 1937 between all the tribes and tribal sections in that comparatively small area with its population of 200,000. The peace treaty carried nearly fourteen hundred signatures, and nearly every signatory was insistent on the independence and self-determination of his own small district or even village.⁸ The ending of tribal warfare in Africa and the establishment of the rule of law, with its guarantee by the state of personal freedom for all, and security of life and of property, is still within the living memory of old men in most of that continent.⁹

There could hardly be a more vivid illustration of the rapidity of this great advance, or of the colonial roots of the mandate system, than the story of the early career of a member of the Mandates Commission. When Lord Lugard went to East Africa in 1888, its interior was still almost entirely unmapped. Intertribal warfare and the slave trade were still rampant. His first expedition in 1888 was to suppress Arab slave traders in Nyasaland. He witnessed the setting-up of the protectorate in Nyasaland in 1893, and of that in Kenya two years later. He witnessed in his own life's experience in Central Africa the ending of tribal warfare, of the slave trade and slavery; the banishing of famine; the establishment of peaceful conditions for the trader and missionary; and the beginnings of the conquest by science of the diseases of man, animals, and crops, and of the wasting away of the soil itself by erosion. In 1893 he gave the first sign of his great work as a pioneer in political

⁸ Harold Ingrams, "Political Development in the Hadhramaut," *International Affairs*, Vol. XXI (1945), p. 239.

⁹ Dr. Meyer Fortes, an anthropologist, who made during the war an anthropological study of West Africa, ascribed to the still living memory of the establishment of peace and the rule of law "the genuine bonds of loyalty towards and trust in the British felt by the peoples of British West Africa," which he found to exist in that area. "The Impact of the War on British West Africa," *ibid.*, p. 210.

theory and colonial policy in the system which he outlined for Uganda by which its internal control should be carried on through existing chiefs. This practice of indirect rule was not new. It had been introduced as the basis of administration in Fiji after 1874, and much earlier in Malaya. But it was Lugard who elaborated the theory and worked it out in practice in the vast field of Nigeria as High Commissioner from 1900 onwards. It was there that he matured his conception of the dual mandate, which was in fact the basic concept of the League mandate system. It was thus for him a natural transition to move from Africa into the wider extension of his life work represented by the mandates system. His great contribution lay in the fact that when his work was done it was at last clear that a ladder had been found up which primitive native tribes could climb steadily to the goal of a self-governing people.

3. THE SACRED TRUST AND TRUSTEESHIP

According to Article 22 of the Covenant, "tutelage" in the mandated areas over "peoples not yet able to stand by themselves" was to be exercised by "advanced nations" as "a sacred trust of civilisation." The conception and practice of trusteeship, the third main historical source of the mandate system, has a lineage hardly less old than that of self-government. The theory appeared in Spanish writings on colonies in the sixteenth century.¹⁰ It is linked historically with early humanitarian and missionary enterprises among native peoples. But as a guiding principle of government policy, with unbroken historical continuity up to the present day, it dates from British Government proclamations and parliamentary discussions in the eighteenth century, including those relating to the slave trade. It underlies passages relating to Indian tribes in the Royal Proclamation of October 7, 1763,¹¹ which treated the new lands in North America, acquired from France in the Seven Years' War, as held in trust. When Mr. Massey, New Zealand's Prime Minister, asked President Wilson in 1919 how George Washington would have

¹⁰ E.g., Francisco de Vitoria's *Relectio De Indis*; see James Brown Scott, *The Spanish Origin of International Law; Francisco de Vitoria and his Law of Nations* (Oxford: At the Clarendon Press, 1934; Publication of the Carnegie Endowment for International Peace, Division of International Law). Cf. J. H. Pary, *The Spanish Theory of Empire in the Sixteenth Century* (Cambridge: At the University Press, 1940). Translations of Las Casas attracted attention in England to Spanish theory.

¹¹ Arthur Berriedale Keith (ed.), *Selected Speeches and Documents on British Colonial Policy, 1763-1917* (London, etc.: Humphrey Milford, Oxford University Press), Vol. I, pp. 8-10.

liked to see the "American" western territories placed under mandate he was asking a question to which history had long ago given the answer.¹² For this proclamation was one of the causes of the American Revolution. One of the main purposes of the proclamation was the preservation of Indian rights to their lands and hunting grounds: "the several Nations or Tribes of Indians . . . who live under our Protection, should not be molested or disturbed in the Possession of . . . their Hunting Grounds." The hinterlands of the new territories were to be preserved for the use of the Indians, and governors were forbidden "upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents" for such lands. And within the territories themselves private purchase of lands was forbidden in view of the "great Frauds and Abuses . . . to the great Prejudice of our interests, and to the great Dissatisfaction of the said Indians . . . and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent. . . ."¹³

Twenty years later, in 1783, Edmund Burke began the great parliamentary campaign by which, in the space of ten years, he was to fix indelibly in the mind and conscience of the British people the conception of trusteeship for dependent peoples. In a speech on Fox's India Bill in the House of Commons in 1783 he proclaimed that "all political power which is set over men . . . ought to be some way or other exercised ultimately for their benefit"; and that "every species of political dominion, and every description of commercial privilege . . . are all in the strictest sense a *trust*; and it is of the very essence of every trust to be rendered *accountable*."¹⁴ Burke was already a leader in the fight against the slave trade and prepared draft regulations on this subject in 1780 which he presented again in 1792. It was under his influence and leadership that the House of Commons in 1788 began the impeachment before the High Court of Parliament of the great British Proconsul Warren Hastings. The charges were the assumption of autocratic powers, breach of trusteeship, and injustices to the peoples under his charge in India. Burke ended his historic speech on February 15, 1788,

¹² *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, p. 753.

¹³ The proclamation had the germ of another idea in Article 22, that of the open door (at least for the Colonies and Great Britain) in the words: "the Trade with the said Indians shall be free and open to all our Subjects whatever." Keith, *Selected Speeches*, *op. cit.*, p. 10.

¹⁴ *The Works of Edmund Burke*, nine vols. (Boston: Charles C. Little and James Brown, 1839), Vol. II, p. 296.

with the great indictment, made not by him as an individual but as the leader of the House of Commons:

I impeach Warren Hastings. . . .

I impeach him in the name of the Commons of Great Britain in parliament assembled, whose parliamentary trust he has betrayed.

I impeach him in the name of the people of India. . . .

I impeach him in the name of human nature itself. . . .¹⁵

He began his speech with the very phrase of the League Covenant and the United Nations Charter—the "sacred trust."¹⁶

Just as the full phrase of the Covenant, "sacred trust of civilisation," went beyond the idea of a national trust to that of a collective responsibility of the whole community of civilized nations, so did Burke's thought: "you try," he said, "the cause of Asia in the presence of Europe." Parliament must apply an "imperial justice"; it must "enlarge the circle of national justice to the necessities of the empire." Justice and morality are universal and not "geographical." "The laws of morality are the same every where."¹⁷

The impeachment was conducted in Westminster Hall, the Hall of Rufus, before the leaders of Britain and the ministers of all the European states. It was no spectacle and sensation of a day but dragged out for seven years, 1788 to 1795, covering 142 full days of proceedings. The accused was finally acquitted by large majorities on every count and history fully sustains the verdict.¹⁸ But out of this trial, as well as the struggle for the abolition of the slave trade and of slavery, came the political doctrines and public conscience that produced national trusteeship systems and, finally, the application to certain territories of the international mandate and trusteeship systems of the twentieth century. Britain abolished slavery in the British Isles in 1772, prohibited the slave trade in 1807, and in 1833 purchased the freedom of all slaves throughout the Empire.¹⁹ Out of the rising feeling against slavery in the United

¹⁵ *Ibid.*, Vol. VII, pp. 264-67, at p. 267.

¹⁶ *Ibid.*, p. 16.

¹⁷ *Ibid.*, pp. 21-23 and 110.

¹⁸ E.g., the chapter on the trial by P. E. Roberts in *The Cambridge History of the British Empire*, *op. cit.*, Vol. IV, Chapter XVII; R. H. Murray, *Edmund Burke: A Biography* (Oxford University Press, 1931), pp. 323-46; James Truslow Adams, *Empire on the Seven Seas; The British Empire, 1784-1939* (New York and London: Charles Scribner's Sons, 1940), pp. 41-43.

¹⁹ The cost to the British taxpayer was £20,000,000. In addition, subsidies had been paid by the United Kingdom to Spain and Portugal for suppressing the slave trade. Harold Nicolson, *The Congress of Vienna; A Study in Allied Unity: 1812-1822* (New York: Harcourt, Brace and Company, 1946), p. 214.

States came the American negro settlements on the West Coast of Africa in 1821 (which were soon to become Liberia) as British Sierra Leone had been founded by British abolitionists in 1788. Towards the settlements in Liberia the United States assumed from the outset the rôle of a trustee in a species of "international guardianship." In the United States itself the abolition of slavery during the Civil War determined finally the policy of treating the American Indian tribes as "wards of the Nation," a principle long upheld by the United States Supreme Court.²⁰

4. COLLECTIVE RESPONSIBILITY AND ACTION BY THE POWERS

The fourth main source of the mandate system was a development in the nineteenth century of collective responsibility and collective action by the powers in relation to dependent peoples. Collective action was required to curb three different kinds of "imperialism": the imperialism of states, the imperialism of private citizens, and the imperialism of native tribal societies. Conditions within native society were an integral part of the problem. It is not conceivable that even a world so rational and just as to be free from imperialisms of the first two kinds, would continue to tolerate intertribal warfare and other conditions such as native slavery and the lack of all control measures over dangerous diseases and other evils that demand united action by the world. Primitive Africa was no utopia of happy peaceful and stable native societies. It was a continent scourged by war, slavery, and disease—without political frontiers in "virtually a single level of primitive savagery";²¹ it was a land in endless flux, where "tribes suddenly rose to greatness, by conquest, or by absorption of neighbouring tribes, and, after a generation or

²⁰ A. H. Snow, *The Question of Aborigines in the Law and Practice of Nations, including a Collection of Authorities and Documents* (Washington: Government Printing Office, 1919), p. 21—a State Department brief for the Peace Conference. For examples of British and American declarations of trusteeship in the nineteenth century, see Snow, pp. 17–38, and M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law; Being a Treatise on the Law and Practice relating to Colonial Expansion* (London, New York, etc.: Longmans, Green and Co., Ltd., 1926), pp. 17–18; also *The Cambridge History of the British Empire*, *op. cit.*, Vol. II, pp. 354–55, 660–61, 686–87, 856. The annexes to this volume (pp. 897–936) contain select lists of the more than 800 British Parliamentary Debates and over 1400 Parliamentary Papers, for the years 1800 to 1870. In this mass of published material, as well as in the many thousands of volumes of correspondence relating to different colonies at the Public Records Office (*ibid.*, pp. 887–96), the welfare of native races is a constantly recurring theme.

²¹ Beer, *op. cit.*, p. 193.

two, sank, almost as rapidly, into former insignificance or totally disappeared forever.”²²

Perhaps in a world of totalitarian states the only kind of imperialistic expansion into primitive societies would be that of the competing states themselves and of state-directed enterprises—political, economic, or cultural. Democratic societies based on the free-enterprise system, both in the economic and the cultural sense, involve a different kind of expansion, that of private individuals and groups. Over the past several centuries this kind of private expansion has carried into a large part of the world western goods and ideas, including competing religions, as well as western disease, western gunpowder, and western drugs and drinks. The free and uncontrolled activities of free citizens of western societies on both sides of the Atlantic had indeed become a serious problem long before the partition of Africa and the Pacific. “It is not too much to say,” reported the Select Committee of the House of Commons on Aboriginal Tribes in 1837, “that the intercourse of Europeans in general, without any exception in favor of the subjects of Great Britain, has been, unless when attended by missionary exertions, a source of many calamities to uncivilized nations. Too often, their territory has been usurped, their property seized; their numbers diminished, their character debased, the spread of civilization impeded. European vices and diseases have been introduced among them, and they have been familiarized with the use of our most potent instruments for the subtle or the violent destruction of human life, viz., brandy and gunpowder.”²³

The expanding frontier of Russia and North America was the result largely of the enterprise of private individuals sweeping ruthlessly east and west at the expense of indigenous peoples. The land was suitable climatically for permanent European settlement and the migration was large enough to eliminate the aboriginal inhabitants in much of the vast area. But Europe also had its frontier—on its southern border—Africa. The Mediterranean was a highroad to Africa, as the St. Lawrence and the Great Lakes were highroads to the American West. Once the Sahara could be crossed or outflanked, as it was in the latter part of the nineteenth century, Africa seemed to open a golden future to Europe’s peoples, for the climatic unsuitability of much of it for permanent white

²² Dr. Norman Leys, *Kenya*, 2d edition (London: Published by Leonard & Virginia Woolf at The Hogarth Press, 1925), pp. 86-87.

²³ As quoted by Snow, *op. cit.*, p. 11. The Report of the Select Committee covered conditions in North and South America as well as in Africa and Australia.

settlement was only slowly realized. Even as late as 1914 an experienced American observer who had surveyed Africa as a member of the United States Consular Service, could describe it as "The Last Frontier" and picture the experience of this frontier of Europe as a repetition of that of the American frontier. The French penetration from the Mediterranean coast he described as "closely parallel" to the expansion westwards across the Mississippi. The railways were thrust forward despite Arab opposition "just as we pushed our railways across the desert in the face of Indian opposition forty years ago."²⁴ Engineers, explorers, settlers, prospectors, traders and missionaries—Frenchmen, Englishmen, Germans, Dutch, Portuguese, and others, sometimes agents of their governments but more often not—were pushing over deserts and up rivers from North, South, West, and East. Their expectation that "a new America was in the making" was to meet with a cruel disillusion. For there was little ready trade to be had and the white man could not settle without first applying science on a vast scale to the conquest of the tropical environment. Because of the climate he could make no move without the aid of native Africans. *They* were tough enough to meet and survive the challenge and were not to be eliminated like the American Indian or the Australian blackfellow.²⁵

Since not one nation but many were concerned in the competition for territory and trade involved in the opening-up of Africa, law and order on this frontier was a problem of maintaining international peace as well as curbing the abuses caused by the unregulated activities of private persons and groups.

Africa was indeed in the forty years before the first World War almost the chief preoccupation of the Foreign Offices. "Foreign Politics means African Politics," Lord Salisbury once said. To preserve peace, to protect in some measure the interests of their own traders, and to preserve the native peoples from some at least of the worst abuses of a lawless frontier, the powers sought to apply to Africa the idea of the Concert of Europe. By means of international conferences they adjusted conflicts and drew up common international rules. It was this habit of dealing with the affairs of Africa and Turkey by means of the concert system—in the case of Turkey from 1826 onwards—that led on directly to the setting up of the mandate system in Africa and in Asia

²⁴ E. Alexander Powell, *The Last Frontier; The White Man's War for Civilisation in Africa* (New York: Charles Scribner's Sons, 1914), p. vii.

²⁵ Cf. Frankel, *op. cit.*

Minor after the war of 1914-18. "There was no large difference," Mr. Lloyd George said at the Paris Peace Conference, "between the mandatory principle and the principles laid down by the Berlin Conference"; the difference as he saw it was the absence in the latter of "external machinery" for the enforcement of the principles.²⁶

"It is not generally appreciated," G. L. Beer, the American expert on African questions, wrote in October, 1918,—

to what an extent the affairs of tropical Africa have been a matter of international concern and regulation. The European diplomacy of the past half-century was almost continuously occupied in preventing the friction generated by the partition of Africa from bursting into the flames of a European war, and it is the greatest achievement of that diplomacy that the political map of tropical Africa as it existed in 1914 had been actually established by the peaceful processes of negotiation. Moreover, no other region had called forth more international cooperation or had been subjected to more comprehensive international control. . . .²⁷

This comprehensive international control was set up as a result of a whole series of international conferences on various subjects, mainly at Berlin and Brussels, in the years 1885, 1890, 1899, 1900, 1906, 1907, 1912. There was also during the period a good deal of collaboration between the powers on a bilateral basis, partly on subjects covered by the multilateral international agreements, and partly on other matters of common concern or affecting the welfare of native peoples. Among the subjects covered in this series of international agreements, apart from political questions like boundaries, were preservation of native rights and interests, the open door and equality of treatment in such matters as customs duties, transit dues and railway rates, navigation on rivers, slavery and the slave trade, the liquor trade, the traffic in arms, the control of sleeping sickness and other diseases, and the preservation of wild animals. At the end of the war in 1919, the more important of the international agreements were revised in instruments signed at St. Germain-en-Laye, on September 10, 1919: namely, the Convention on the Revision of the General Act of Berlin of February 26, 1885, and of the General Act and the Declaration of Brussels of July 2, 1890; the Convention on the Control of Trade in Arms and Ammunition replacing the Brussels Act of July 2, 1890; the Convention on the Liquor Traffic in Africa, revising the General Act of Brussels of July 2, 1890, supple-

²⁶ *For. Rel. U. S., Paris Peace Conference, 1919, Vol. III, p. 750.*

²⁷ Beer, *op. cit.*, p. 193.

mented by the Brussels Conventions of June 8, 1899, and November 3, 1906.

The General Act of the Berlin African Conference of 1885 was the greatest single step in the collective treatment of African affairs.²⁸ It was noteworthy for a number of reasons: *First*, it substituted peaceful negotiation for dangerous competition between the powers. *Second*, it marked the acceptance by the powers of the principle of national trusteeship. Article 6 of the General Act of the Conference (which paid its tribute to the public conscience of the world by its opening phrase, "In the name of Almighty God") gave collective international recognition to the principle in the following words: "All the Powers . . . [i.e., those exercising sovereignty or influence in the Conventional Basin of the Congo] bind themselves to watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade." *Third*, as the historian of the Peace Conference of Paris pointed out, the Berlin Conference produced a direct precedent for the mandate system in the form of the mandate from the powers to King Leopold of Belgium to administer the Congo Basin.²⁹ *Fourth*, it marked the recognition finally that the slave trade was "forbidden," not merely by national legislation but, in the words of the Act (Article 9), by "the principles of international law as recognized by the signatory Powers." *Fifth*, the principle of the open door for the trade and navigation of all countries was set out in clear terms and extended over the vast area of what came to be known as the Conventional Basin of the Congo, extending right across Africa from the Atlantic to the Indian Ocean. In this immense region all import duties were at first prohibited. It was made an area of complete free trade; but this prohibition proved unworkable and was modified in the Brussels Act of 1890, which allowed import duties up to 10 per cent ad valorem.

All this represented a great achievement. But the lack of international machinery for supervision led to the evasion of the provisions of the Act, especially in the Congo, where King Leopold's regime broke down completely and Belgium took over in 1908. Moreover, the inter-

²⁸ Crowe, *op. cit.*, gives a realistic account of the diplomatic struggle.

²⁹ "The only previous analogy in history to the mandatory system is to be found in the Berlin-Congo Act of 1885 whereby the principal European Powers concerned in Africa entrusted the task of administering the Congo Basin to King Leopold II of the Belgians subject to the limiting conditions of the Berlin-Congo Act." Temperley, *op. cit.*, Vol. VI, p. 502. Cf. Lugard, *op. cit.*, p. 49.

national rules regarding the open door, the slave trade, the liquor traffic, and the trade in arms were inadequately observed. There is no doubt that this experience, by demonstrating the importance of international machinery for securing reports from territories and for exercising adequate supervision, had a most important effect in shaping the various elements of the mandate system.

The thirty years of international regulation of African affairs before the first World War showed that the governments were evolving certain fairly well defined principles in relation to dependent areas which can be set out as follows :

(1) A breakdown of peace, through territorial rivalries and questions of access to markets and raw materials, might be avoided by a concert of the powers (including the United States and Russia).

(2) The principle of the dual mandate—that trusteeship for dependent peoples involved not only duties by the colonizing power towards the peoples under trust but also obligations towards the family of nations which themselves also had a collective responsibility in the matter—was well recognized.

(3) Starting from the clear precedent of the prohibition by international law of the slave trade, the powers recognized that duties to backward peoples form a suitable subject-matter for international law.³⁰

(4) The necessity was acknowledged of laying down in the form of multilateral international agreements, buttressed by bilateral agreements, certain common international rules and standards. The powers were thus testing out regionally rules which were capable of world-wide extension and which in some cases were embodied in general international conventions after the first World War.

(5) While there was complete agreement that only the national governments could put such rules and standards into effect, and no question of international administration or international enforcement had as yet arisen, there were already hints that some kind of permanent international machinery for coordination and supervision was regarded as desirable. The series of international conferences of governments referred to above were indeed a means adopted by the governments to follow up, review, and amend earlier decisions.

Thus, before the first World War there existed over a large part of Africa the main elements of the mandate system, save the highly important one of continuous international supervision which the mandate sys-

³⁰ Lindley, *op. cit.*, pp. 326-27.

tem was finally to supply, if only for seven of the African territories. How far the system had taken shape as regards Africa before the World War can be seen from two parliamentary acts of 1908 and 1909: (1) the Belgian Act of Parliament of September 8, 1908, called "the Colonial Charter," which set up for the Congo (Article 5) a detailed system of national trusteeship which expressly implemented the trusteeship principle of the Berlin Act;³¹ (2) the British Act of Parliament, which constituted the Union of South Africa in 1909 (9 Edward VII). The latter Act incorporated in a schedule a detailed draft mandate-containing the conditions on which the Union must govern any native British territories that might be transferred to it under Article 151 of the Act.³²

Snow, reviewing the history of the hundred years since the first attempt was made in 1815 at the Congress of Vienna to secure international action against the slave trade, pronounced that by 1918 it was "established as a fundamental principle of the law of nations that aboriginal tribes are the wards of civilized States"³³ and that the system of "trusteeship"—the term in general use in 1918—was firmly established in the colonies of the leading colonizing states, including the United States.

³¹ Snow, *op. cit.*, pp. 50-51.

³² H. Duncan Hall, *The British Commonwealth of Nations; A Study of its Past and Future Development* (London: Methuen & Co, Ltd. [1920]), pp. 337-38.

³³ Snow, *op. cit.*, p. 117.

CHAPTER IX

THE PARIS PEACE CONFERENCE AND THE ADOPTION OF THE MANDATE SYSTEM

I. THE MANDATE IDEA DURING THE WAR

The genesis of the mandate system as idea and policy during the war of 1914-18 will not be clear until full access can be had to the archives of London and Washington. It is the evolution of official thinking which is the all-important part of the story. One corner of the veil was lifted recently by Viscount Samuel, a member of the British Cabinet in the first part of the war.¹ Memoranda and notes of conversations quoted by him show that as early as November, 1914, through March, 1915, the ideas that led to the Palestine mandate were being discussed with the British Foreign Office and the Cabinet, and the discussion led straight back to the nineteenth-century mandate experiments of the powers in Turkey described above. The various possible alternative means of establishing a Jewish homeland, whether by annexation or by a British protectorate or by internationalization, were all discussed. A conversation on February 5, 1915, written down on that day, records Sir Edward Grey, British Foreign Secretary, as doubting "the possibility or desirability of the establishment of a British Protectorate" and suggesting several possibilities, including neutralization "under international guarantee," an international commission to control the Holy Places, or, if Turkey were to remain suzerain, "a regime somewhat like that of Lebanon, but with the governor appointed by the Powers."² In 1915, it was already clearly foreseen that the idea of a Jewish state run on democratic lines was impracticable since the great majority of the inhabitants were Arabs. This was precisely the rock which was to wreck the attempts made (by Sir Herbert Samuel as first High Commissioner of the Palestine mandate, and subsequently) to implement the clause of

¹ Samuel, *op cit.*, Chapters XIV to XVI.

² *Ibid.*, p. 176. The reference to the Lebanon is to French intervention there in 1860 under mandate from the powers; to the "governor appointed by the Powers" refers back to the arrangements made in December, 1897, regarding Crete, and to those made by the Berlin Congress. See also above, Chapter I, section 5.

the mandate which required the "development of self-governing institutions"; since the Arab majority always refused to take part in any constitution which did not confer full powers upon the majority, i.e., themselves.³ These discussions early in 1915 were the background of (1) the clause in the Sykes-Picot (Anglo-French) agreement of May, 1916, providing for Palestine and the Holy Places a "special regime" to be agreed among the powers, and (2) the Balfour Declaration of November 2, 1917, on "the establishment in Palestine of a National Home for the Jewish People" without prejudice to the rights of the Arabs.

Nor was the thinking in international trusteeship terms confined to Palestine. Six months earlier, in May, 1917, Mr. Balfour, British Foreign Secretary, had said to the American Ambassador: "If the United States will help us, my wish is that these German Colonies that we have taken, especially in Africa, should be 'internationalized.'" And he went on to suggest that the parts of Asia taken from Turkey should be treated in the same way.⁴

Thus, already in 1917 in official thinking in Great Britain the general line of the mandate system seemed to have emerged. In unofficial thinking an international solution, with some form of trusteeship for colonies taken from the enemy, was very much in the air. The press and the war literature were full of such ideas, as were unpublished private discussions. What appears to have been the first clear outline of the mandate system as finally adopted was given in a memorandum issued by the British Independent Labor Party on August 28, 1917.⁵ This proposal was in opposition to the British Labor Party's proposal earlier in the month that all tropical Africa between the Zambesi and the Sahara should be transferred to the League of Nations, and subjected to "administration by an impartial Commission under that authority, with its own trained staff, as a single independent African State."⁶ The same solution was proposed by the Labor Party for Turkish territories. Among the principles of the regime were to be the open door, the supremacy of native interests, and neutralization.

In place of this proposal the I.L.P. memorandum urged the adoption of the mandate system, i.e., administration by "individual European

³ Samuel, *op cit.*, pp. 177, 208.

⁴ B. J. Hendrick, *Life and Letters of Walter H. Page* (Garden City, New York: Doubleday, Page & Company, 1922-25), Vol. II, p. 247.

⁵ *The Times* (London), August 29, 1917, p. 8.

⁶ *Ibid.*, August 11, 1917, p. 4.

States under the supervision of an International Commission charged with the observance of the principles" above mentioned. These discussions led directly to the adoption, on February 23, 1918, by the Inter-Allied Labor and Socialist Conference in London, of the I.L.P. proposal for a League of Nations mandate system. The Conference proposed for German colonies "a system of control, established by international agreement under the League of Nations and maintained by its guarantee, which, whilst respecting national sovereignty," would take into account the wishes of the natives, safeguard their rights and interests, including their land rights, and preserve the open door. A similar system was envisaged for Turkish territories; in cases where they were unable "to settle their own destinies . . . they should be placed for administration in the hands of a Commission" acting under the League of Nations.⁷

Here was the League mandate system outlined in its main essentials for the first time in public declarations to which the widest publicity was given and which were brought to the attention of the governments on both sides of the Atlantic. It was the system, but as yet without the word. The word had long been in use in relation to the Mediterranean and the Middle East as we have seen.⁸ But in the context of the Peace Conference preparations it may have been given currency by G. L. Beer, who used it in a note on Mesopotamia dated January 1, 1918; he used it frequently in his later studies prepared in that year for the use of the American delegation at the Peace Conference.⁹ Mr. Beer worked all through 1918 on colonial questions with his mind firmly fixed on the mandate principle; and in November he conferred with British officials and members of the Round Table Group in London (for which he had been acting as American correspondent for the *Round Table* quarterly review).¹⁰

On November 27, the British Foreign Office gave an outline of its policy on colonies to the American Embassy in London, in which it proposed that German colonies in mid-Africa and Turkish territories should be administered by the United States, Britain, and France "under mandate League of Nations; thus Great Britain in Mesopotamia,

⁷ *Ibid.*, February 25, 1918, p. 3.

⁸ See above, Chapter I, section 3.

⁹ Beer, *op. cit.*, pp. xviii-xix, 424, etc.

¹⁰ Wright, *Mandates Under the League of Nations*, *op. cit.*, pp. 22-23. See also the *Round Table*, London, Vol. 9 (December, 1918).

America in Palestine, Constantinople and the straits; France probably in Syria. . . ."¹¹

What was understood in London by the phrase "under mandate" was indicated clearly in a Foreign Office memorandum on the League drawn up early in November and adopted as a reasoned basis for British drafts of the Covenant. Its mandates paragraph was as follows:

The treaty should give precision to the idea of the responsibility of the civilised States to the more backward peoples. Trusts or, to speak more precisely, charters should be drawn up for the various territories for whose future government the signatory Powers have to issue a mandate, and particular areas handed over to individual States who would be responsible to the League for the discharge of that mandate. Arrangements of this kind will require to be made for tropical Africa, for the Pacific Islands, and for Western Asia.¹²

This conception of the mandate system was the one that was to emerge finally in Article 22 of the Covenant.¹³ A discussion in the Imperial War Cabinet which took place on November 28, and which is quoted by Mr. Lloyd George, showed a clear understanding of the mandate system as well as the alternatives to it.

It was generally agreed that "mandatory occupation" did not involve anything in the nature of a condominium or international administration, but administration by a single Power on certain general lines laid down by the League of Nations. These lines would naturally include equality of treatment to all nations in respect of tariffs, concessions, and economic policy generally. Similarly, there would be no militarisation, or fortification of the territory in question. Finally, there would be a right of appeal from the mandatory Power to the League of Nations on the part of anyone who considered himself illtreated, or claimed that the conditions laid down by the League of Nations were not being fulfilled. Subject to such appeal, which might involve the League of Nations withdrawing the mandate in the case of

¹¹ Telegram from Slocum to Chief of Staff March. *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. I, pp. 408-9. Mr. Lloyd George a month before (October 30) had told Colonel House that Britain desired "the United States to become trustee for German East African colonies." *Ibid.*, p. 407. The American King-Crane Commission proposed a U. S. mandate over all Syria (including Palestine), Constantinople and the Straits, etc. See above, p. 19, note 5a.

¹² See Zimmern, *The League of Nations and the Rule of Law, 1918-1935*, pp. 194, 196-208.

¹³ General Smuts used this memorandum in writing his plan of the League (*ibid.*, p. 209). According to Mr. Lloyd George (*op. cit.*, Vol. I, p. 514), General Smuts was the first person to bring the mandates idea before the Imperial War Cabinet, in a memorandum circulated to it. But General Smuts' own plan diverged from the Foreign Office memorandum by excluding the German colonies. This divergence was accepted neither by the British Government nor by President Wilson in his second (January 10) draft based on the Smuts plan. On the wider significance of the Smuts' plan, see above, Chapter I, section 3.

deliberate and persistent violation of its conditions, the mandate would be continuous until such time as the inhabitants of the country themselves were fit for self-government.¹⁴

Mr. Lloyd George adds his own comment that the outstanding feature of the discussion was "the complete unanimity with which the Imperial War Cabinet accepted the doctrine of the Mandate in respect of enemy possessions, except in South-West Africa and the islands conquered by Australia and New Zealand."¹⁵

A fortnight later (December 16) General Smuts, who had put the mandate conception before the Imperial War Cabinet, published a reasoned plan of the new League of Nations which was to exercise a profound influence on the shape of the mandate system, as well as upon that of the League as a whole.¹⁶ His central principle (as was shown in Chapter I, above) was that the collapse of the old Empire should not be followed by "national annexation" of the derelict territories. Instead, the League should be made the "reversionary" of these Empires "with the right of ultimate disposal." A new League order based on the principle of "no annexations" and "self-determination" should be applied among the "peoples and territories formerly belonging to Russia, Austria and Turkey." Some of these would be fit for immediate statehood. But others were not yet able to stand alone. And these, he suggested, should be placed under the authority of the League of Nations. Its authority, he urged, should not be exercised by direct or joint international administration, which experience had shown to be a failure. The best solution was nomination by the League of a single state as mandatory "subject to the supervision and ultimate control of the League."¹⁷ His sixth recommendation reads:

That the degree of authority, control, or administration exercised by the mandatory State shall in each case be laid down by the League in a special Act or Charter, which shall reserve to it complete power of ultimate control and supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatory State.¹⁸

Other recommendations included demilitarization and the observance of the open door.

¹⁴ Lloyd George, *op. cit.*, Vol. I, p. 118.

¹⁵ *Ibid.*, p. 123.

¹⁶ Smuts, *op. cit.*

¹⁷ *Ibid.*, pp. 11-23.

¹⁸ *Ibid.*, p. 22.

As was mentioned in Chapter I, General Smuts' plan was not intended to apply to the African colonies, which he thought should be disposed of on the basis of the fourteen points of President Wilson.¹⁹ Neither President Wilson's fifth point regarding colonies nor his twelfth point regarding Turkish territories had any hint of mandates. The fifth point, indeed, definitely implied annexation.²⁰ But by December, 1918, President Wilson's own views had become clearer. On December 10, as the American delegation crossed the Atlantic, he had proposed to it "that the German colonies should be declared the common property of the League of Nations and administered by small nations."²¹ At the end of December Mr. Lloyd George saw President Wilson, gave him General Smuts' proposals, and informed him of the discussions in the Imperial War Cabinet, including the views of the Dominions.²²

President Wilson proceeded to incorporate the mandate proposals of General Smuts in his own draft of the League Covenant, with a few textual changes and one important addition, namely, the extension of the system to German colonies in Africa and the Pacific. This was the first American draft of the League to be circulated to the Allied Governments (on January 10, 1919).²³

2. THE HIGH DEBATE IN PARIS, 1919

The mandate discussions at Paris are now of far greater interest than ever in the past, since the wheel of history has turned full circle and the world is back where it was in 1919. On January 30, 1919, after only a week of discussion (not exclusively devoted to colonial issues), the Conference agreed to a draft communiqué proposed by President Wilson

¹⁹ *Ibid.*, p. 15.

²⁰ The fifth point read: "A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined."

²¹ Charles Seymour, *The Intimate Papers of Colonel House*, Vol. IV: *The Ending of the War* (Boston and New York: Houghton Mifflin Company, The Riverside Press, 1928), pp. 281-82.

²² The following passage records his report back to the Imperial War Cabinet: "With regard to the Colonies, he [Mr. Lloyd George] had left the matter by telling the President that the question would have to be fought out at the Conference, where the Dominions would be able to present their own case." Lloyd George, *op. cit.*, Vol. I, p. 192.

²³ For a study of the President's draft, showing the various departures from the wording of General Smuts, see article by Professor Pitman Potter, "Origin of the System of Mandates under the League of Nations," *American Political Science Review*, Vol. XVI (1922), pp. 564-69.

The "monstrous" version of the contemporary newspaper headlines has received the support of many historians, not merely in the United States (where it found emotional support in traditional attitudes towards "European colonialism"), but also in some circles in Europe. The gist of this version is that Article 22 was the result of an annexationist plot sprung on President Wilson by the Allies at the Peace Conference by which he was forced, contrary to his wishes, to agree to a form of "veiled annexation." This was at first, but only for a short time, the official opposition line of some of the European Labor and Socialist parties. Thus, the French Confédération Général du Travail, on May 27, 1919, spoke of the settlement as "nothing but annexation, which is scarcely even veiled." On the other hand, the Labor and Socialist International at Amsterdam, on April 28, 1919, welcomed the mandate system as preferable to direct international administration, but called for its application to all colonies.²⁸ But the more extreme view persisted, even in some weighty historical works like that of H. A. L. Fisher, who wrote, in his *History of Europe*, that "the crudity of conquest was draped in the veil of morality."²⁹ That such a legend had gained currency was recognized in the League Council, where the Italian delegate, M. Tittoni, on August 4, 1920, urged speed, as the mandates were being regarded by the public as "convenient fictions of a temporary character."³⁰

The accumulation of fresh historical evidence, a lengthening perspective, and the vantage ground of a Second World War and even more of a second world Peace—that for over two years could make no peace on the colonial issue—have discredited this version and tipped the scales in favor of the Peace Conference's own judgment that the mandates settlement was "satisfactory." The most authoritative recent American history of the Peace Conference supports this verdict. It concludes that President Wilson, far from failing, gained in fact "a surprisingly extensive diplomatic victory."³¹ Both in form and in substance (as the working of the mandate system was to show), the President secured the two

²⁸ For the views of the different labor parties, see British Labour Party, *Labour and the Peace Treaty*, *op. cit.*

²⁹ H. A. L. Fisher, *History of Europe*, Vol. III: *The Liberal Experiment* (Boston and New York: Houghton Mifflin Company; Cambridge: The Riverside Press, 1936), p. 1207.

³⁰ *Procès-verbal of the Eighth Session of the Council of the League of Nations, Held in San Sebastian, from July 30th to August 5th, 1920*, L.N. Document 20/29/14, p. 41. The currency of the legend was due both to unrealistic attitudes and ignorance of the facts given in Chapter I, above.

³¹ Paul Birdsall, *Versailles; Twenty Years After* (New York: Reynal & Hitchcock, [1941]).

main points of his policy: the principle of no annexation, and the application of the mandatory principle to all ex-enemy colonial territories without serious exceptions.³²

If the President did not carry the idea of his January 10 draft that title should be vested in the League, at least his stand prevented title being conferred, possibly in several cases, upon the mandatory power. He accepted several phrases like "geographical contiguity" (Article 22, paragraph 6) for "C" mandates, which implied political decisions in favor of the occupying power (notably South Africa and Australia). But history has shown that this concession was unimportant compared with what he got in return; namely, acceptance of the mandate principle by the countries concerned. They met him more than half-way in agreeing to the territories becoming mandates, when in fact (though they were then unaware of this) President Wilson's own colonial expert, G. L. Beer, had strongly advised that annexation was the best solution in the case of South-West Africa and New Guinea.³³

President Wilson admitted France's right in a "general war" to use African troops recruited in its mandated territory "to repel an attack or for the defence of the territory outside that subject to the mandate."³⁴ A "general war" in the sense of the Covenant could only be construed as a war waged by an aggressor against members of the League. The concession was very widely and bitterly criticized as a betrayal of the League. Yet it was plain common sense and in accordance with any realistic system of collective security. Moreover, the principle for which France had held out in 1919 was to be made in 1945 a cornerstone of the trusteeship system of the United Nations Charter.³⁵

³² In opposing annexation the President was also rejecting advice from his own Department of State that the United States, in the interest of her security in the Pacific, should propose the return of the Pacific islands to Germany and then negotiate with Germany to obtain possession of them. See memorandum of Mr. Breckenridge Long (dated December 14, 1918), prepared for the United States delegates to the Peace Conference. *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. II, pp. 512-15.

³³ Beer, *op. cit.* See above, Chapter VII, note 16. His reason for placing Samoa and the smaller islands off New Guinea under mandate was that if these were annexed Japan could not be prevented from annexing all the islands north of the equator.

³⁴ The words are from Article 3 of the mandates for French Cameroons and Togo. For the discussion, see *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, pp. 803-5. Since this chapter was written a decision of the Supreme Council in December, 1919 (expressly concurred in by the State Department) applying this interpretation to all "B" mandates, has been published. See below, Chapter XVI, section 1.

³⁵ Article 84. See above, Part I, Chapter VII, section 1; and below, Chapters XVI and XVII, section 1.

3. THE OCCUPYING POWERS AND THE "ANNEXATIONIST PLOT"

So far the problem before the Peace Conference has been looked at rather from the point of view of President Wilson. But the significance of the agreement finally secured becomes clear when the matter is looked at from the point of view of the other countries directly concerned. The cardinal point not appreciated by many critics of the Peace Conference is that in the discussion at Paris governments were honestly exploring together a difficult and obscure problem on which there must inevitably be differences of opinion even among reasonable and public-spirited statesmen. General Botha's now famous speech on January 30, that turned the tide towards agreement when feelings were running high, dwelt on this point. Such differences of opinion as had been shown were not, as President Wilson had felt, a "threat," Botha said, and they must not be taken as rejection of the common ideal of an effective League of Nations for which all were prepared to make concessions.²⁶ The justice of the remark was to become clearer in the light of the next twenty years. It was the governments taking part in this debate that, by their agreement, created the mandate system. It was they that drafted the self-imposed limitations of the mandate charters. It was they that put the system into operation, weakened though it was by the absence of the United States. It was they—all except Japan—that sustained it and made it effective by their loyal cooperation with the central organs of the League during the twenty-six years of the League's life. Throughout this period the relation of the League to the mandatory powers remained as stated by Mr. Balfour in the Eighteenth Session of the League of Nations Council. Speaking with special reference to Palestine, he said that "mandates were not the creation of the League, and they could not in substance be altered by the League." He further pointed out that "a mandate was a self-imposed limitation by the conquerors on the sovereignty which they exercised over the conquered territory. In the general interests of mankind, the Allied and Associated Powers had imposed this limitation upon themselves, and had asked the League to assist them in seeing that this general policy was carried out, but the League was not the author of it. . . ." ²⁷

France and Great Britain were to be the mandatories for all the more important of the mandates—all those in the "A" and "B" groups (ex-

²⁶ *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, p. 801.

²⁷ *League of Nations, Official Journal*, III (1922), p. 547.

cept Ruanda Urundi which was later made a Belgian mandate). France supported the mandatory principle. The French Minister for the Colonies began by rejecting mandates and expressing a strong preference for annexation. This speech (following as it did speeches by the Dominions) led to President Wilson's exclamation that so far the discussion had been "a negation in detail—one case at a time—of the whole principle of mandatories," and to his comment (a little later) that "the world would say that the Great Powers first portioned out the helpless parts of the world, and then formed a League of Nations."³⁸ These remarks became historical headlines to the neglect of the decisive speech in which the French Prime Minister, M. Clemenceau, rejected the view of his own Colonial Minister and accepted the mandate system on behalf of France and expressed his faith in the principle of a League of Nations. He dwelt on the obscurity—amply demonstrated by this discussion—that hung over many important aspects of the proposal. President Wilson had implied, he said, a League with "government functions." No one knew who were to be the trustees nor the nature of the controls. "The idea of an unknown mandatory acting through an undetermined tribunal gave him some anxiety."³⁹

Great Britain's support of the mandatory principle for all territories under the control of the United Kingdom had been made clear in diplomatic exchanges before the Peace Conference met and was restated several times early in the Conference by Mr. Lloyd George and Mr. Balfour.⁴⁰ Under the constitutional principles of the British Commonwealth this agreement could not bind the self-governing Dominions in respect of the territories adjacent to them which their forces had taken from the enemy and which they—parliaments as well as governments—desired to annex. Their position in this matter was supported by Great Britain at the Conference in accordance with understandings reached in the Imperial War Cabinet in 1917 and 1918. The rôle played by Mr. Lloyd George at the Peace Conference was fourfold: (1) to make clear Britain's acceptance of the mandate system for herself; (2) to see that the Dominions were given the fullest opportunity at the earliest possible moment to state their case;⁴¹ (3) to give them moral and diplomatic support;⁴² (4) to induce them to agree finally to the compromise

³⁸ *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, pp. 763, 765-66.

³⁹ *Ibid.*, pp. 768, 769.

⁴⁰ *Ibid.*, pp. 749, 764 (January 28), 785 (January 30). See also above, this chapter, section I.

⁴¹ *Ibid.*, p. 700 (January 23).

⁴² *Ibid.*, pp. 718-20 (January 24), 750 (January 28).

solution of Article 22 as regards "C" mandates in the form of the text (drafted mainly by General Smuts) introduced by Mr. Lloyd George on January 30, and finally accepted by the Conference.⁴³

The "annexationist plot" with which the Dominions, supported by France and Japan (with Mr. Lloyd George as stage manager), have often been charged, is described by Professor Birdsall as "pure melodrama" based largely on fantasy. The supposed stage direction for the launching of the plot occurs in the Minutes of the Council of Ten on January 24. "At this stage the Dominion Prime Ministers entered the room."⁴⁴ Some writers have turned these words into the stage direction that opens Shakespeare's *Henry IV*—"Enter Rumour, painted full of Tongues. . . . Stuffing the ears of men with false reports"—with themselves playing the part of Rumour. They have taken the words as indicating a plan by Mr. Lloyd George to force on the Conference and President Wilson a discussion of the colonial issue. The facts were that President Wilson had already agreed with the proposal, made in the meeting of January 23, that the colonial issue should be taken first (it being the only territorial issue ready) and that the Dominions should be invited to be present. It was their constitutional right to be present since the matter on the agenda was of direct and vital interest to them. Their claims were no surprise to the President. Colonel House had reported to him, on October 30, 1918, a conversation in which, he said, Mr. Lloyd George had told him that unless the claims of South Africa and Australia were met "Great Britain would be confronted by a revolution in those dominions."⁴⁵ And, as we have seen, the President had been fully informed at the end of December of the attitude taken by the Dominions in the Imperial War Cabinet, and that they would present their cases at the Conference.⁴⁶

The Dominion Prime Ministers neither lost time nor spared plain speaking in presenting their case. Mr. W. M. Hughes became famous at the Conference as a pungent and picturesque realist who got on splendidly with M. Clemenceau and not so well with President Wilson. A clue to his realism and temper is given in the words he used in 1936 at Canberra when congratulated by the writer for seeing and saying—even at the cost of his seat in the Cabinet—that it was not much good to im-

⁴³ *Ibid.*, pp. 785-86 (January 30). See Lloyd George's own account, *op. cit.*, Vol. I, pp. 515 ff. and 537 ff.

⁴⁴ *Ibid.*, p. 718.

⁴⁵ *Ibid.*, Vol. I, p. 407.

⁴⁶ See above, this chapter, section 1.

pose sanctions against Italy without being prepared to go to war if necessary: "It's easy for me to see such things," he replied, "I'm a Welsh tribesman." Living as a tribesman on the frontier and convinced that League or no League this was not the last of the wars, he saw the mandate system as putting a possible enemy in an Australian frontier area. Moreover, he was expressing the views of the Australian Parliament, both houses of which had resolved in November, 1918, that New Guinea should be annexed by Australia, which for fifty years had regarded it as vital to national security. Mr. Massey, Prime Minister of New Zealand, though less pungent, was equally persistent in demanding that New Zealand should annex or at least control Samoa, and here again he spoke for a national sentiment of long standing. The speeches in which both Prime Ministers finally expressed their reluctant acceptance of the mandate system as defined in the resolutions of January 30⁴⁷ were so couched that President Wilson demanded with obvious irritation whether "he was to understand that New Zealand and Australia had presented an ultimatum to the Conference."⁴⁸ Whereupon General Botha, who "felt very strongly" about the incorporation of South-West Africa in the Union of South Africa, poured oil on the waters. He made a twofold appeal—to the President, that he should respect honest differences of opinion; and to the Conference, not to lose sight of the high ideal of the League in stumbling over lesser issues.⁴⁹ Thereafter the mandate text was adopted provisionally with little further debate.

This first great debate of the Peace Conference was notable for the speed of the decisions and the obscurity of the proposals. In the six days of the debate, from January 24 to 30, the powers had to decide issues of great theoretical and practical importance, involving for several of them the fate of frontier provinces. They had left behind them anxious cabinets and parliaments. General Botha had received a peremptory telegram to return when news of discussions leaked out on the 30th. Mr. Hughes had to reassure his Cabinet that he would consult them on the proposals made. They had to debate on the basis of obscure drafts. On January 27, Mr. Lloyd George pointed to the budgetary deficits common in dependencies. Who would pay in a mandate for deficits and the very large sums required for public works and develop-

⁴⁷ See above, p. 114.

⁴⁸ *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. III, p. 799.

⁴⁹ *Ibid.*, pp. 800-2.

ment? Who would defend the shores?⁵⁰ On the 28th, Mr. Balfour observed that while Britain favored the principle of mandates "very little thought had been given to the position of a Mandatory Power." There was no answer, he pointed out, to such questions as to whether the tenure was to be stable or "merely temporary"—in which case "there would be perpetual intrigues and agitation."⁵¹ Even on the 30th Mr. Hughes commented that "it was proposed really to govern the fate of people by declaring that a certain principle should apply, but to what extent that principle should apply, or by whom that principle should be applied, or when it should be applied, no one knew."⁵²

This remark followed a speech by President Wilson which seemed designed to stave off rather than clinch an immediate agreement on the draft text before the Conference, though he admitted they were "within an easy stage of final agreement."⁵³ "The people of America," the President said, "would be most disinclined" to act as a mandatory, e.g., in territory of Turkey, with which the United States was not even at war. "Therefore, it would, in his opinion, be extremely unwise to accept any form of mandate until they knew how it was intended to work." He admitted many points were still quite obscure. "Therefore no one should accept the scheme unless it was shown how it was going to work." This speech, Mr. Lloyd George said, "filled him with despair." How could any agreement ever be reached if each point were to be made contingent on many others? In the meanwhile, he pointed out, "the British Empire was maintaining 1,084,000 troops, including 300,000 British troops, in the Turkish Empire alone."⁵⁴ To which President Wilson replied by quietly accepting the proposed draft as a "provisional arrangement."⁵⁵

4. SECURITY AND THE SACRED TRUST

It was this emphasis on the "provisional" nature of the agreement that produced the tension of the session that same afternoon, which in turn led the President to speak of threats and an "ultimatum." For the occupying powers wanted a speedy answer to a question which for the Dominions was of vital interest affecting national security, namely:

⁵⁰ *Ibid.*, p. 747.

⁵¹ *Ibid.*, pp. 763-64.

⁵² *Ibid.*, p. 793.

⁵³ *Ibid.*, pp. 786-89.

⁵⁴ *Ibid.*, pp. 788-90.

⁵⁵ *Ibid.*, p. 791.

Who was to be the mandatory stationed on their frontier? For as Sir Robert Borden had noted at the close of the debate on January 24, "all the cases advanced rested upon the plea of security,"⁵⁶ a plea which he accepted in the case of his fellow Dominions. General Smuts pointed out that South-West Africa would have been annexed to the Union in 1884 but for "the dilatoriness of the Imperial Government" and the sudden action of Bismarck.⁵⁷ The Germans had used the territory, General Botha declared, "merely as a military station" from which rebellion was fomented in the Union in 1914. Unless the territory were incorporated in South Africa, he warned, "the small German population would continue to foment trouble in order to get back to Germany, and those troubles might extend to the Union."⁵⁸ (This was an exact forecast of what in fact happened during the next twenty years.⁵⁹) Mr. Massey pointed out that Samoa lay on New Zealand's main water route to the Panama Canal: "If, by any chance, Samoa were in hostile hands, New Zealand would be strangled." He based his policy on the assumption that "we had not reached the last war," that "history has a knack of repeating itself," and that another power "just as unscrupulous as Germany . . . might make war."⁶⁰ Mr. Hughes spoke with the same foresight: Australia could not feel safe with a "potential or actual enemy" at its very door. If the islands at her door were "in the hands of a superior power there would be no peace for Australia." "Any strong power controlling New Guinea controlled Australia." Since, he went on, "history showed that friends in one war were not always friends in the next," Australia "would see a potential enemy" in the mandatory power established in New Guinea under international control. If the mandatory were to be the League itself, or if the League governed through the mandatory, then it "would be so overwhelmingly superior in power to Australia that Australian authority would be completely overshadowed."⁶¹

The dilemma of the Dominions at Paris was thus that of the United States at San Francisco: either make certain now of your strategic frontier or risk it becoming in other hands a threat to national security. President Wilson had a formula, not too convincing for a tribesman, for

⁵⁶ *Ibid.*, p. 728.

⁵⁷ *Ibid.*, p. 722.

⁵⁸ *Ibid.*, p. 744.

⁵⁹ See above, Part I, Chapter VII, section 2(c).

⁶⁰ *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. III, pp. 725 and 751.

⁶¹ *Ibid.*, pp. 721-22.

discounting such arguments based on security and the recurrence of war. If all had confidence in the League, he said, there could be no danger of the mandatory being ousted "because all the other nations would be pledged, with the United States in the lead, to take up arms for the mandatory. Therefore, all danger of bad neighbours was past. . . ." ⁸² Such an argument carried no weight with the realists at Paris. They accepted the mandate system, not because of the exaggerated claims made for it or the League; they took it as a reasonable compromise in a world in which they judged that the state system, the balance of power, and the possibility of war must continue, being too deeply embedded in human nature and society to be eliminated save by the process of centuries.

The text as adopted, however, gave no such certainty of control over the areas on the frontier. Not only was it "provisional," but, in Mr. Lloyd George's words, it "did not deal with the distribution of mandates at all, but only laid down the general principles." ⁸³ Nevertheless, reference in the text to territories which, "owing to . . . geographical contiguity to the mandatory state . . . can be best administered under the laws of the mandatory state as integral portions thereof" clearly pointed to Australia and South Africa as mandatories, respectively, for New Guinea and South-West Africa.

President Wilson's general line was that the choice of the states to be named mandatories must remain an open question. ⁸⁴ But at times he spoke as if he took for granted that the occupying states were to become the mandatories. What he had to say, for example, on January 27 about South-West Africa showed that he regarded South Africa as the inevitable mandatory. But it indicated also another point that was to be of interest twenty-seven years later to Field Marshal Smuts—still the great leader of his country—when South Africa was to raise the question before the United Nations Assembly of the union of South-West Africa with South Africa. The ultimate union of this territory with the mandatory would seem, President Wilson said, a "natural union." "It was up to the Union of South Africa to make it so attractive that

⁸² *Ibid.*, p. 742.

⁸³ *Ibid.*, p. 805. Professor Birdsall (*op. cit.*, p. 74) suggests, however, that "Wilson certainly agreed, implicitly, to an eventual grant of some sort of title to the possessor nations."

⁸⁴ Allocation of the "B" and "C" mandates was made on May 7. The President tried to postpone it as long as possible. On May 5, he agreed that the allocations "to all intents and purposes" had already been decided, but added that he was "very anxious to avoid the appearance of a division of the spoils being simultaneous with the Peace." *For. Rel. U. S., Paris Peace Conference, 1919, Vol. V, p. 473.*

South West Africa would come into the Union of their own free will," and, he declared, "if successful administration by a mandatory should lead to union with the mandatory, he would be the last to object."⁸⁵

This and similar passages show that President Wilson did not take the doctrinaire view that the "natural end" of a mandate was independence, since what mattered was the "true wishes" of the people; and these wishes, when they could be ascertained, "might . . . perhaps lead them to desire their union with the mandatory power."⁸⁶ From this followed logically the President's adoption of the idea of the administration of "C" mandates as an "integral portion" of the mandatory's own territory. This wording was not something which the draft of January 30 forced him to accept against his will. Mr. Lloyd George had thrown out the idea on January 24, but the President was to make it his own on the 27th—two days before the draft text of Article 22 containing this provision was prepared by General Smuts. If South Africa were the mandatory, the President said on that day, it would extend its laws to South-West Africa, and "administer it as an annex to the Union so far as consistent with the interest of the inhabitants."⁸⁷

Nor could it be said that the President was being doctrinaire because of his very strong insistence on the principle of no annexation. His statement that "if the process of annexation went on, the League of Nations would be discredited from the beginning,"⁸⁸ had a sound basis. He illustrated it by a story of a man who kept buying up property on the plea that he "would never be satisfied so long as anyone owned any land adjoining his own." But the application of any such general principle to particular situations must inevitably meet with difficulty in cases where, in Burke's phrase quoted above, it is the "circumstances" which determine the application of the principle. A plea for annexation based on the ground of security might be well founded in one case, but not in another. "It is in truth extremely difficult to know," Secretary of State James F. Byrnes told the American people on his return from the Paris meeting of the Four Great Powers on May 20, 1946, "to what extent the action of any nation may be ascribed to its quest for security or to its desire to expand."⁸⁹ The test applied at the Paris Peace Conference in 1919 was discussion in full conference and acceptance of decisions

⁸⁵ *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. III, pp. 740-42.

⁸⁶ *Ibid.*, p. 741.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, p. 743.

⁸⁹ U. S. Department of State, *Bulletin*, June 2, 1946, p. 952.

based on a reasonable compromise between opposing points of view. The compromise adopted at Paris was rejection of annexation even of contiguous frontier provinces in favor of the mandate system; but it was also a compromise which gave satisfaction to the reasonable claim of the Dominions for security on their frontiers, since it had the effect of assuring them that no other mandatory except themselves would be installed in the territories. Faced itself with the same problem in 1946 in taking over the Japanese mandate, the United States put forward a "strategic area" trusteeship agreement which went far beyond the 1919 mandates in its insistence on security and carried the strategic frontier of the United States to the Philippines.⁷⁰

5. ASSUMPTIONS AT PARIS

So far we have looked mainly at the things in the forefront of the mandate discussions. In any historical settlement it is often the things taken for granted or dismissed on the margins that are the most important. Some of the underlying factors and assumptions have been noted above, such as the assumption of the Dominion Prime Ministers that there would be further wars and of the overriding importance of national security.

There was very little reference at the Conference to native welfare and the need of safeguards against abuses like slavery and the arms and liquor traffic; but these things were taken for granted and provided for in the Covenant.

Three other assumptions must be referred to, namely, (1) the assumption that the only workable mandate was that of an individual mandatory with undivided responsibility; (2) the assumption that "advanced nations" would accept the responsibility of the "sacred trust"; (3) the assumption of democracy.

(a) *Individual versus Collective Trusteeship*

History has shown that the first of these assumptions had some foundation. The system of individual mandatory proved to be a workable solution. What are of greater interest now are the alternatives which the Conference rejected, namely, the condominium, and direct international administration with or without transfer of title to the League;

⁷⁰ See below, Chapter XVII.

and the reasons why the Conference rejected solutions of this kind. Reference has been made above to the rejection of these solutions by the Imperial War Cabinet, and European labor parties. President Wilson may have been toying with the idea of leaving open the alternative of direct administration by the League when he referred (in his draft of January 10) to territories reverting to the League, which was to have "sovereign right of ultimate disposal *or of continued administration.*" But neither he nor other statesmen supported at the Conference the idea of direct League administration, and nearly every speaker explicitly rejected it.⁷¹ General Smuts in his League plan rejected it on the ground that experience had shown it to result in "paralysis tempered by intrigue."

In rejecting the condominium and direct international administration, the statesmen at Paris were supported by the advice of the leading colonial experts on both the British and American sides. It was after a study of past experience of what he called "international protectorates" and "administrative internationalism" that G. L. Beer arrived at the mandate principle, which he referred to as the "concentration of responsibility" on an individual mandatory state, preferably "that state whose interests are most directly involved."⁷² He accepted as a correct judgment of the facts as he had ascertained them the well-known words of Lord Cromer. "The experiment of administrative internationalism," Lord Cromer wrote in his *Modern Egypt*, "has probably been tried" in this "No Man's Land [Egypt] to a greater extent than in any other country. The result cannot be said to be encouraging to those who believe in the efficacy of international action in administrative matters. What has been proved is that international institutions possess admirable negative qualities. They are formidable checks to all action, and the reason why they are so is that, when any action is proposed, objections of one sort or another generally occur to some member of the international body."⁷³ The United Nations Charter was to reject this verdict on both the condominium and direct international administration by providing in Article 81 that the administering authority might be "one or more states or the Organization itself."

⁷¹ The solution of direct League administration was adopted, however, for a limited fifteen-year period for the Saar. This was in effect a League mandate. See above, Chapter I, p. 21.

⁷² *Op. cit.*, pp. 421-24.

⁷³ Evelyn B. Cromer, *Modern Egypt* (New York: The Macmillan Company, 1916), pp. 303-4.

(b) *The Duty of the Sacred Trust*

The mandate system required from the "advanced nations" two things to make it effective: first, that they should accept its principles; second, that they should accept their share of responsibility for fulfilling the duty of the sacred trust. On the theory of the sacred trust, acceptance of this positive responsibility would be at least as important as restraint of "imperialism." From this point of view the cornerstone of the system was the words in the second paragraph of Article 22: "The best method of giving practical effect to this principle [the sacred trust] is that the tutelage of such peoples should be entrusted to advanced nations who . . . can best undertake this responsibility, and who are willing to accept it. . . ." The words *who are willing to accept it*—i.e., the responsibility—were added at the instance of the United States, despite strong murmurings by other nations. They were added in response to pressures from American public opinion after the draft Covenant had been made public.⁷⁴ They were an indication that the United States was unwilling to undertake any direct responsibility for the sacred trust. In reporting to President Wilson (on October 30, 1918) Mr. Lloyd George's desire that the United States should become trustee for German East Africa, Colonel House had commented: "My feeling as to his suggestion regarding German East Africa is that the British would like us to accept something so they might more freely take what they desire."⁷⁵ Mr. Lloyd George reported back to the Imperial War Cabinet. Colonel House's views and said that "the first step was to find out if the United States were prepared to take their share of responsibility in a mandatory capacity."⁷⁶ On November 27, the British Foreign Office had suggested, as mentioned above, that the United States should take over the mandate for Palestine as well as German East Africa. Similar suggestions were made by American and other sources.^{76a}

The preliminary American answer was made in the Peace Conference, both in the mandate discussions in January and February and in those on the Turkish treaty in March. On March 20, President Wilson explained to the Conference the "great antipathy in the United States to the assumption of these responsibilities. Even the Philippines were regarded as something hot in the hand that they would like to drop." He

⁷⁴ Bonsal, *op. cit.*, pp. 207-8.

⁷⁵ *For. Rel. U. S., Paris Peace Conference, 1919, Vol. I, p. 407.*

⁷⁶ *Op. cit.*, Vol. I, p. 122.

^{76a} See above, p. 19, note 5a; also p. 20, note 6a, for mandates in Baltic Provinces.

added that "the Turkish Empire was in complete solution. The Councils of the world would have to take care of it. For his part, he was quite disinterested, since the United States of America did not want anything in Turkey. They would be only too delighted if France and Great Britain would undertake the responsibility."⁷⁷ Nevertheless, he would try to put it over in the United States. He tried, but failed, with the rejection by the Senate, on June 1, 1920, of a mandate over Armenia.

On the British side there were no illusions as to what the taking over of responsibility for the Palestine mandate was to mean. "We are not going to get anything out of it," Lord Robert Cecil told the Imperial War Cabinet in December, 1918: "Whoever goes there will have a poor time." Mr. Lloyd George quotes Mr. Winston Churchill as reporting to the Imperial War Cabinet six months later (June, 1919): "We are discharging with great pain and labour a thankless obligation."⁷⁸

Rejection of the League itself followed rejection of any responsibility for mandates. The mandate system, designed for a League "with the United States in the lead" in the President's words, was born under the ill omen of American withdrawal. The League went ahead with the mandate design, but the structure without the American cornerstone was bound to sag under the weight of such troubles as those that were to arise in Palestine, Syria, and the North Pacific.

(c) *The Assumption of Democracy*

There was one other fundamental assumption in the Peace Conference in 1919, namely, that the political and social system that had to be fostered in the mandated territories as fast and as far as it could be attained by primitive peoples was the democratic way of life as it had developed historically in the English-speaking world and in France. This was the goal assumed by all; and by it, all (save Japan) understood the same thing: liberty of person, opinion, and property; the rule of law; the freedoms of Magna Carta, the Bill of Rights, and the Rights of Man; and in due course, self-government with self-determination, ending in political partnership with the mandatory state or independence. These are the assumptions explicit or implicit in the opinion given by the Mandates Commission, and approved by the Council of the League on September 4, 1931, on the "General Conditions Which Must be Fulfilled before the

⁷⁷ Lloyd George, *op. cit.*, Vol. II, p. 1068.

⁷⁸ *Ibid.*, pp. 1150, 1193.

Mandates Regime Can be Brought to an End in respect of a Country Placed under that Regime.”⁷⁹

The powers were not faced in 1919 (as they were to be in the United Nations) with any conflict in their basic ideology or way of life. If they rejected any idea of joint international trusteeship, in favor of the undivided responsibility of a single mandatory, it was not because they feared any serious divergence in the ideologies of the different elements taking part in such an international regime. It was rather because they believed that the economic or political interests of the partners would be likely to pull in different directions and so reproduce the characteristic defects of the condominium of the past. *

⁷⁹ For text, see League of Nations, *The Mandates System; Origin, Principles, Application* (Geneva, 1945), pp. 118-20. See below, Chapter XIII, section 6.

CHAPTER X

TRANSITION: THE SETTING-UP OF THE MANDATE SYSTEM

I. PARALLELS: 1919 AND 1945

In 1919 at Paris, as at San Francisco in 1945, the Conference of the Allies framed a constitution, leaving for the future the political decisions as to territories, allocation of trusts, and the nature of the trusts. The reasons for this, so far as the Paris Conference of 1919 was concerned, were set out in Part I of this study, written before the San Francisco Conference of 1945. At the San Francisco Conference the same necessities imposed the same general lines of solution. So that—perhaps without any conscious attempt to follow the precedents of 1919—there were a number of close parallels between the transitions following each of the world wars. How significant such parallels really are will only be clear in the light of events not yet foreseeable. For there was at least one great difference between the two periods, namely, that the second transition was marked by deeper conflicts of ideologies, of social systems, and of strategic aims between some of the great powers.

Though the transition from 1919 to 1922 was a long and difficult one, it never at any time seemed to offer difficulties as great as those which confronted the powers in the period following the San Francisco Conference of 1945. In 1919, the great powers began in unity. There was no serious disagreement between them at the meeting of the Supreme Council in May which allocated the "B" and "C" mandates, nor in the discussions in July and August during which the texts of the mandates were framed. Though in 1919, one great power—the United States of America—broke away from the League and the mandates system, this meant withdrawal into isolation and not any serious clash of wills on mandates. The United States wanted no share in the control of any territories and rejected all offers of trusteeship; it demanded only economic equality in the territories and that it should have a voice in allocation and definition of the terms of the mandates. Yet even this rather minor trouble was sufficient to cause two to three years' delay in getting

the mandate system into full working order. Reservations made by France and Japan during the drafting of the "B" and "C" mandates in July, August, and December, 1919, could hardly be said to have caused serious delay. France's objection that the "B" mandate text appeared to prevent her recruiting natives for service outside the territory was met in the final draft of the mandates for the French Cameroons and Togoland. The Japanese objection regarding the absence of the open door in the "C" mandates (involving a denial of racial equality in migration and trading rights) was finally withdrawn when the Council of the League confirmed the "C" mandates. On December 17, 1920, the Japanese representative informed the Council that, "from the spirit of conciliation and cooperation and their reluctance to see the question unsettled any longer," the Japanese Government had decided to agree to the issue of the mandates in their present form though they reserved their right to protest against any actual discrimination affecting Japanese subjects.

In 1919 as in 1945, while the Covenant and the Charter were being framed, the ex-enemy territories were under the control of occupying powers, usually the power that had wrested the territory from the enemy. In 1919, the occupying power, which in a number of cases had been in possession of the territory for as many as four or five years, in the end became the mandatory without having to claim a right to annexation based on conquest. Yet conquest and occupation were factors in the situation. Thus, the New Guinea Act of September 30, 1920—ten weeks before the League Council confirmed the mandate—which made provision for the "acceptance of a Mandate" begins by referring in the preamble to the fact that the islands were "conquered by and surrendered to" the Commonwealth; that Germany had renounced her rights and titles to the Principal Allied and Associated Powers, and that the territories are "now occupied by the Commonwealth." It went on to cite the fact that the Allies had agreed that a mandate should be conferred on the Commonwealth, and that under the Covenant the mandate "is to be issued" to it by the League of Nations. Thus, in law and in fact the Commonwealth was exercising for a certain period a provisional mandate. This situation was foreseen at the Peace Conference in 1919, where it was suggested that occupying powers were in fact exercising provisional mandates while waiting for their full confirmation. The opposition of the Dominions to the mandate idea arose in part, as was mentioned in the previous chapter, out of their fears that just because

everything was provisional, they might in the end be edged out and find another power as mandatory on their frontiers.¹

Similarly, Article 80 of the United Nations Charter, foreseeing the period of transition that must occur after the Second World War, reserves for members of the United Nations any right that might arise from occupation, or conquest, or previous mandate, or otherwise, until individual trusteeship agreements have been concluded.

There was a fairly close parallel between 1919 and 1945 in the provisions for allocation—nomination of the mandatory or trustee power and definition of the frontiers, as well as the drafting of the terms of the mandate or trust agreement. Thus, from January, 1920, the B and C territories were both legally and *de facto* at the disposal of the Allied Powers. In the autumn of 1947 a legal settlement of the ex-enemy territories was still not in sight, but, as in 1919, individual powers were in occupation. The Covenant itself was silent on the matter of allocation as well as of delineation of frontiers; but it was fully understood that this function was to be assigned to the Principal Allied and Associated Powers, to which the German territories were ceded by Article 119 of the treaty of which the Covenant formed Part I. The Charter, however, made the understanding more explicit, since Article 77 stated that "it will be a matter for subsequent agreement as to which territories . . . will be brought under the trusteeship system and upon what terms." Article 79 indicated vaguely how the "subsequent agreement" was to be made.²

In the matter of confirmation or approval of the trusteeship agreements there was some divergence between the Covenant and the Charter. Under the Covenant, Article 22, paragraph 8, the Council had to define explicitly the terms of the mandates if they had not been "previously agreed upon by the Members of the League." The Charter has no such provision. Article 85 merely assigns to the General Assembly the function of "the approval of the terms of the trusteeship agreements" (other than those for strategic areas which under Article 83 have to be approved by the Security Council); and it can only approve something

¹ Hence the questions by Sir Robert Borden and Mr. Lloyd George, as to whether the mandates could not be named at once instead of waiting for the League to be formed. *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. III, pp 766 and 770. While things were provisional, Mr. Lloyd George pointed out, everything was unsettled, and meanwhile the British Empire was maintaining in the Middle East area over a million men and Parliament would want to know why. *Ibid.*, pp. 805-6.

² See below, Chapter XVII.

that has been accepted already by a mandatory power and the "states directly concerned"—though the latter proved to be undiscoverable.

Further, the possibility that a territory provisionally assumed to be a future mandate or trust territory would become instead an independent state, linked with a great power by treaty, existed in both transitions—Iraq in the first period, Trans-Jordan and possibly others in the second.

Direct international administration, expressly provided for in the Charter, was perhaps not possible under Article 22 of the Covenant, though it existed in the Saar by virtue of another provision of the Treaty of Versailles. When the great powers offered the Council of the League a mandate for Armenia in 1920, the offer was rejected—in part because the legality of a direct League mandate was questioned.

Finally, one other parallel may be noted. The dispute in 1945 regarding a "temporary trusteeship committee" was a revival of a point raised but dismissed in 1919-20. The idea of a provisional mandates commission was mooted then, as we shall see below, for almost the same reason that the proposal was made in 1945.

2. "C'EST LE PROVISOIRE QUI DURE"

The transition in the case of the League mandate system is thus of considerable interest from the point of view of the setting up of the trusteeship system of the United Nations. In both cases the word "provisional" is written all over the transitional periods between the framing of the constitution and the setting in motion of the working system: provisional occupation by the occupying powers, provisional mandatories or trust powers, provisional mandates or trusts, provisional annual reports on the territories, provisional Mandates Commission, and the long delay in the setting up of the Trusteeship Council because a provisional solution could not be agreed upon. In both cases the provisional regime, the period of transition, lasted far longer than was anticipated. "C'est le provisoire qui dure."

Both in the case of the League and of the United Nations the transition was divided into two clearly marked parts. First, the period before the general international organization came into being—about six months in both cases.³ Second, the period in which both the League

³ The Treaty of Versailles was signed on June 28, 1919, and the Covenant came into operation six months later on January 10, 1920. The United Nations Charter was signed on June 26, 1945, and came into force on October 24, 1945. Detachment from the peace treaties alone made this possible, since the major treaties with Germany and Japan were held up indefinitely.

and the United Nations were waiting upon the decisions of the Allied Powers: in 1919-23, the Allied Supreme Council's decisions and the results of negotiations of England, France, and Italy on Palestine and Syria and of the United States with individual mandatories; and in 1945-47, the Big Four debates and the negotiations carried on between some of the mandatory powers and "states directly concerned."

During these transitions a whole series of questions had to be raised and answered. What territories were to be put under the system and what to be excluded from it? What were to be the frontiers of the mandated or trust territories? What powers would become mandatories? What was to be the form of the mandates or terms of the trust? ("A," "B," or "C," or "special case" like Iraq? Single mandatory or condominium, or international administration?) Who was to draw up the texts of these instruments? Who had to agree to them? What was to be the rôle of the Allies? And what would happen if a major power stayed out and refused to accept this rôle or exercised the veto? At what point and how was the general international organization to enter on its functions? What would it do (1) when it learned what trustee powers had been named by the Allies, and (2) when the texts of the draft charters were delivered into its hands? And could it act at all legally in the period when all was provisional?

3. THE PHASES OF THE TRANSITION: WHO DID WHAT, AND WHEN

The sequence of the acts and the different rôles of the actors (each playing several parts—Britain as occupying power, mandatory, member of the Supreme Council, the League Council, the Assembly) become clearer if we keep steadily in mind the three parallel threads on which the fabric of events was woven: (1) The first thread was that of the occupying powers (the future mandatories which were in continuous occupation of the territories during and after the war). The occupying power provided for the government of the territory and finally framed its fundamental law in execution of the mandate conferred or to be conferred upon the mandatory by the Allied Supreme Council and the Council of the League acting jointly. This was far the longest and stoutest of the three threads. (2) The second main thread (but the shortest of the three since it ran only from the Peace Conference until it wore through about the end of 1923) was that of the Allied Supreme Council of the five great powers—Britain, France, Italy, Japan, and at first the

United States. The Supreme Council decided which territories were to be mandates, delimited the frontiers, named the mandatory powers, drafted the mandate texts, and notified the League of the steps taken. (3) The third and last main thread was that of League action which began when the League came into existence on January 10, 1920, and frayed out in the Second World War. In order of their appearance, the several strands in this last thread were the Secretary General, the Council, the Assembly, and the Permanent Mandates Commission. A study of the sequence of events as given in the accompanying table will show clearly the relation of these three elements throughout the four transitional years that were to elapse before mandates as a constitutional formula could be translated finally into mandates as a full working system complete in all its parts.

4. THE OCCUPYING POWER—NEW GUINEA

As regards the first of the three threads indicated in the preceding section—the rôle of the occupying (later mandatory) power—not much need be said here. The territory of New Guinea may be taken as a fairly characteristic example. Military occupation began at the outbreak of the war, September 12, 1914. Since that date occupation by Australia has been continuous, first, by conquest, and then as mandatory of the League of Nations, and finally, as trustee under the United Nations. A military administration was set up immediately after the occupation and continued, gradually becoming more and more civilian in character, until its formal end on May 9, 1921, when it was replaced by the civil administration. By the New Guinea Act of September 30, 1920, the Commonwealth of Australia provided for the acceptance of the mandate which was "to be issued to the Commonwealth of Australia," and for the government of the territory under civil administration. This Act was the fundamental law of the territory. Under the military administration German law was followed, and the German arrangements for government retained, as far as was consistent with the military occupation and the condition of war. As the report to the League of Nations on the period of military occupation stated, "military occupation, moreover, was prolonged to a period that had never been expected; not only did it last through over four years of war, but, owing to the time which was occupied in settling the terms of peace and in issuing the Mandate of the League of Nations, under which the Territory is now

I THE TERRITORY (New Guinea as an example)	II THE ALLIED SUPREME COUNCIL 1917 et seq. (Great Britain, United States, France, Italy, Japan)	III LEAGUE OF NATIONS January 10, 1920
1914: September 12. Military occupation. Military administration set up.		
1919	<p>May 7 Allocation of "B" and "C" mandates to occupying powers with delimitation of frontiers.¹</p> <p>June 28 Treaty of Versailles signed. By Article 119, Germany ceded her overseas territories to the Principal Allied and Associated Powers for mandates under Article 22.</p> <p>July-Aug. Texts of "B" and "C" mandates drafted.</p> <p>July 10 Franco-British Agreement regarding frontiers of Togo and Camerouns.</p> <p>Aug. 21 Allocation of Ruanda Urundi to Belgium.</p>	<p>Jan. 10 League of Nations established by entry into force of Peace Treaty. Article 22 of Covenant comes into force.</p>
1920		

¹ The United States made a reservation on Yap, and France and Japan on the "B" and "C" drafts. France and Great Britain were authorized by the Supreme Council to settle with the League one allocation, as the following extract from its minutes of May 7 shows: "Togoland and Camerouns: France and Great Britain shall make a joint recommendation to the League of Nations as to their future." *Responsibilities of the League Arising Out of Article 22 (Mandates): Report by the Council to the Assembly, L.N. Document 20/48/161, Annex 2.* An agreement between the two powers on the delimitation of frontiers was made on July 10, 1919, and communicated to the League.

I	II	III
<p>1920—Continued</p>	<p>Apr. 25 Allocation of "A" mandates. (United States not represented; but invited to accept mandate over Armenia.)</p> <p>May 12 United States note to British Government insisting on sharing in definition of mandates.²</p> <p>June 1 United States Senate rejected mandate over Armenia by vote of 52 to 25.</p>	<p>July 30 Secretary General's Memorandum on Mandate System. (Mandatories in occupation though unconfirmed. Delay of powers in forwarding mandate texts. Council may have to draw up texts.)</p> <p>Aug. 4-5 Council adopts Hymans' report on League obligations under Article 22, asking Principal Powers to inform it regarding their choice of mandatories and frontiers (and to forward draft mandates) and lays down the lines on which the Permanent Mandates Commission should be constituted.</p>

² This was the first of a series of diplomatic exchanges with the British Government on United States right to participate in defining the mandates and on the question of economic equality in the "A" mandates, especially in relation to oil resources. The correspondence was published in Cmd. 678, 1921. See also W. R. Batsell, "The United States and the System of Mandates," *International Conciliation* (1925), pp. 273-74; and Quincy Wright, *Mandates under the League of Nations*, op. cit., pp. 48-56.

I	II	III
<p>1920—<i>Continued</i> Sept. 30 New Guinea Act, 1920,³ the "Organic law" (providing for acceptance of a mandate "to be issued to the Commonwealth of Australia," and for the government of the territory under civil administration.)</p>		<p>Oct. 12 Secretary General proposes provisional constitution of P.M.C. with 7 mandatory-power representatives and 8 nationals of non-mandatory powers appointed personally by Assembly.</p> <p>Oct. 23 Council rejects Assembly elections of P.M.C. and sends further reminder to powers regarding texts of mandates.</p> <p>Nov. 14 Council discusses P.M.C. on lines of Hymans' and Secretary General's proposals.</p> <p>Nov. 15 First Assembly meets: refers Agenda item 29 (Mandates: Responsibilities of the League arising from Article 22) to its Sixth Committee.⁴</p>

³ For another and far more elaborate specimen of an organic law, see *Mandates; Organic Law for Syria and the Lebanon* (Geneva, 1930), L.N. Document C.352.1030.VI.

⁴ *Journal of the First Assembly of the League of Nations, Geneva, 1920*, No. 2, November 16, 1920, p. 9; *ibid.*, No. 1, November 15, 1920, p. 2.

I	II	III
<p>1920—<i>Continued</i></p>	<p>Dec. Draft mandates submitted to League Council.</p>	<p>Nov. 26 Council adopts new and final basis for P.M.C. (dropping direct representatives of mandatories).</p> <p>Nov. 29 Further reminder to powers with warning Council must act on mandate texts.</p> <p>Nov. 29 P.M.C. constitution approved by Council.</p> <p>Dec. 6 Council reports to Assembly on responsibilities arising from Article 22.</p> <p>Dec. 7-17 Mandates discussed in Sixth Committee of Assembly.</p> <p>Dec. 17 "C" mandates confirmed by Council (with minor amendments) and enter into force. Texts published December 18.</p> <p>Dec. 18 Assembly resolution on mandates asking the Council to publish all mandate texts before it confirms them; to request the governments to make provisional reports on their administration during the period of their occupation, etc.</p>
<p>1921</p>		<p>Jan. Texts of "A" and "B" mandates published.</p> <p>Feb. 17 Secretary General sends certified copies of "C" mandates to the signatories of the Versailles Treaty.</p>

I	II	III
1921.— <i>Continued</i>	<p>Feb. 21 United States protests directly to League Council, asking postponement of confirmation of mandates until American views ascertained. (Separate treaties negotiated with mandatory powers 1922-25.)¹</p>	<p>Feb. 22 P.M.C. members appointed by Council.</p> <p>March 1¹ Council deferred confirmation of "A" and "B" mandates and invited the United States to take part in discussion of mandates at next session. (No reply was given by the United States Government.)</p>
<p>April 4 Mandate text received in Australia.</p> <p>May 9 End of military administration. Civil administration established.</p>		<p>Sept. 8 Council asks mandatory to hasten negotiations with the United States.</p> <p>Sept. 5 Second Assembly regrets delay in conclusion of "B" mandates which to its Sixth Committee attributes to the United States (L.N. Documents A. 105. 1921; A. 148. 1921.)</p>

¹ Treaties securing for the United States the same rights as League members and their nationals in respect of the open door, the furnishing to it of a duplicate annual report, etc., were concluded by the United States as follows: Japan, February 11, 1922 (on Yap); Belgium, April 18, 1923; France, February 13, 1923 (Cameroons and Togo); April 4, 1924 (Syria and Lebanon); Great Britain, December 3, 1924 (Palestine); February 10, 1925 (Cameroons, Togo, Tanganyika). Despite repeated efforts, the United States was unable to make any treaties with Australia, New Zealand, or South Africa in respect of their mandates, which did not provide for the open door. Italy withheld agreement on the Syria mandate until September 20, 1923.

I	II	III
<p>1921--Continued</p>		<p>Oct. 4-8 P.M.C. First Session. (Draft Rules of Procedure, and Questionnaires for "B" and "C" mandates.)</p> <p>Oct. 10 First Report of the P.M.C. presented to League Council, and Questionnaire (Form of Annual Reports) approved by Council.</p>
<p>1922</p> <p>June 23 First (Provisional) Annual Report to League for period Sept., 1914, to June, 1921, received by League Secretariat.</p>	<p>Feb. 11 United States Treaty with Japan regarding Yap.</p> <p>May United Kingdom announced agreement with United States on Palestine mandate.</p>	<p>Jan. 10 Rules of Procedure of P.M.C. approved by Council (Sixteenth Session).</p> <p>July 20 Agreement having been reached between the United States and "B" and "A" mandatories, "B" mandates were confirmed (with some slight modifications) by League Council, and entered into force.</p>

I	II	• III
<p>1922--<i>Continued</i></p>		
<p>Aug. 3 Report considered by P.M.C. at its Second Session in presence of Australia's accredited representative.</p>		<p>July 24 "A" mandates (Palestine, Syria and Lebanon)⁶ tentatively confirmed (subject to agreement between French and Italian Governments on Syria).</p>
		<p>Aug. 1-11 P.M.C. Second Session. Minutes and Report on "C" mandates circulated to Assembly (L.N. Documents A. 35. 1922. VI; A. 36. 1922. VI; A. 39. 1922. VI).</p>
		<p>Aug. 23 Questionnaire on Palestine mandate issued (L.N. Document C. 553. M. 335. 1922. VI).</p>
		<p>Sept. 4-30 Third Assembly. Mandates and Slavery referred to Sixth Committee by resolution of Dr. Nansen. (Report in L.N. Document A. 72. 1922. VI).</p>
		<p>Sept. League Council approves proposal by United Kingdom of September 16 for separate regime for Trans-Jordan.⁷</p>

⁶ The "A" mandate drafted for Iraq in 1920 did not enter into force, being replaced by the Treaty of Alliance between Great Britain and Iraq of October 10, 1922 (supplemented by a protocol of April 30, 1923, and agreements signed on March 25, 1924). These were accepted by the Council of the League on September 27, 1924, as giving effect to Article 22 of the Covenant. This acceptance was so drafted that it may be taken as constituting a mandate of a special kind. For text, see Wright, *Mandates under the League of Nations*, op. cit., pp. 593-94.

⁷ The Council likewise accepted the treaty of January 13, 1926, providing for continuance of the Treaty of Alliance for twenty-five years unless prior to that Iraq became a member of the League of Nations (which she did on October 3, 1932). Texts of the treaties up to 1926 are collected in *Iraq: Decisions of the Council of the League of Nations of September 27th, 1924, and March 11th, 1926, relating to the Application of the Principles of Article 22 of the Covenant to Iraq, together with Certain Treaties and Agreements between Great Britain and Iraq, and other Relevant Documents* (Geneva, 1926), L. N. Document C.216.M.17.1926.VI.

⁸ This was followed by (1) recognition in 1923 of an "Independent Government" as in Iraq, (2) a treaty in 1928, (3) independence with a Treaty of Alliance, signed on March 22, 1946.

I	II	III
1922— <i>Continued</i>		Oct. Council considers report of P.M.C. on mandates, including provisional mandates.
1923		Jan. 31 Rules of Procedure for Petitions adopted by the Council (Interpreted and expanded 1927).
	Feb. 13 United States Treaty with France (Cameroons and Togo).	
	Apr. 18 United States Treaty with Belgium (Ruanda Urundi).	
	July 24 Lausanne Treaty of Peace with Turkey. (By Article 16, Turkey renounced all rights to territories outside the frontiers laid down in the treaty, "the future of these territories and islands being settled or to be settled by the parties concerned.")	July 20— P.M.C. Third Session. Aug. 10
		Sept. 29 "A" mandates (Palestine and Syria) enter into force.

held, the military occupation continued for nearly two years and a half after the conclusion of the armistice with Germany.”⁴

The New Guinea Act of 1920 provided for the government of the territory in accordance with the mandate, which the Governor General was authorized to accept when it was issued by the League of Nations. The Act provided (in its Article 15, headed “Guarantees”) for all the safeguards of Article 22 of the Covenant as elaborated in the text of the mandate, which was already in existence in draft form; namely, prohibition of slavery, forced labor; control of arms traffic in accordance with the Brussels Act, 1890, as amended at St. Germain; prohibition of the supply of intoxicating spirits and beverages to the natives; prohibition of military training of the natives other than for local defense, and of the establishment of naval or military bases or fortifications; freedom of conscience. Finally, the Act stipulated (Article 16) that the Governor General should make an annual report to the Council of the League containing “full information” as to the measures taken to carry out the guarantees indicated above, and “as to the well-being and progress of the native inhabitants of the Territory.” In prohibiting forced labor even for essential public works and services, the Act went further than the mandate itself.

The Commonwealth Government received, on April 4, 1921, from the Secretary General the certified copy of the mandate (confirmed by the League Council on December 17, 1920), and on April 7, the Governor General issued a proclamation declaring the New Guinea Act in force as from May 9. On that date the military occupation of the territory ended and the civilian government took charge. “Before civil government was established, the only armaments in the Territory [a battery at Rabaul] were dismounted and the battery was converted to a quarantine station.”⁵ Ordinances were made whereby German law ceased to apply. German rights in lands were vested in the Commonwealth, but all rights or customs of the natives in relation to land, hunting, or fishing were expressly reserved. Certain laws of the Commonwealth were applied to the territory as well as certain acts and statutes of the State of Queensland and of England, and ordinances of the territory of Papua. And finally it was provided that “the principles and rules of common

⁴ Commonwealth of Australia, *Report to the League of Nations on the Administration of the Territory of New Guinea, from September, 1914, to 30th June, 1921*, Parl. Paper No. 3, F.1495 (1922), p. 6. This report contains the text of the New Guinea Act, 1920, pp. 61 ff.

⁵ *Ibid.*, pp. 18-19.

law and equity, that were for the time being in force in England, should be the principles and rules of common law and equity in force in the Territory . . . so far as they were applicable to the circumstances of the Territory."⁶ In 1920 German properties were expropriated, and in 1921 German nationals were deported from the territory. In accordance with the request contained in the resolution of the League Assembly on December 18, 1920, asking mandatory powers to send the Mandates Commission a report on the administration of the territories, the Governor General forwarded in June, 1922, a report on the administration of the territory from December, 1914, to June 30, 1921. The first regular annual report followed in the next year.

5. THE ALLIED SUPREME COUNCIL—ALLOCATION AND DRAFTING

The rôle of the Allied Supreme Council (consisting of Great Britain, France, Italy, Japan, and the United States in the initial period) in deciding on the mandated territories, delimiting their frontiers, naming the mandatory powers, drafting the mandate texts, and giving the necessary notifications to the League of Nations, is outlined in the table shown above. The legal basis for their action was Article 119 of the Versailles Treaty, by which Germany renounced in favor of the Principal Allied and Associated Powers⁷ all her rights and titles over her overseas possessions, and Article 16 of the Treaty of Lausanne. In disposing of these territories, the powers were bound by Article 22 of the Treaty of Versailles, i.e., the territories were ceded subject to the agreement to set up a mandates or trusteeship system. The allocation of mandates, as of trust territories under the United Nations, was regarded as part of the territorial settlement in which neither the League nor the United Nations would have a part.

The following note of a meeting of the Supreme War Council held on May 7, 1919, shows how clear-cut the rôle of the Supreme Council was:

⁶ *Ibid.*, pp. 19-20.

⁷ It was Mr. Lansing, American Secretary of State, who proposed at the Paris Peace Conference the addition of the word "Principal" on the ground that "many of the small nations, possessing no interests whatever in these territories would be included in the term 'Allied and Associated Powers' and, in his opinion, it would be a calamity for such Powers to vote and discuss as to who were to be appointed mandatories. The principal Powers should hold the titles, as trustees for the future, until the determination of the mandatories." *For. Rels. U. S., Paris Peace Conference, 1919, Vol. IV, pp. 660-61.*

The following decisions were reached:

Togoland and Cameroons: France and Great Britain shall make a joint recommendation to the League of Nations as to their future.

German East Africa: The Mandate shall be held by Great Britain.

German South-West Africa: The Mandate shall be held by the Union of South Africa.

The German Samoan Islands: The Mandate shall be held by New Zealand.

The other German Pacific possessions south of the Equator (excluding the German Samoan Islands and Nauru): The Mandate shall be held by Australia.

Nauru: The Mandate shall be given to the British Empire.

German Islands north of the Equator: The Mandate shall be held by Japan.⁸

The Council of the League and the Secretary General on several occasions clearly expressed their understanding of the responsibilities conferred upon the Principal Allied and Associated Powers. Thus the Council, in its reply⁹ made on March 1, 1921, to a note from the American Government, stated the respective duties of the Supreme Council and the Council of the League: The duty of allocating the mandated territories belonged to the former, while the latter was charged with the oversight of the administration of the territories once they had been allocated. When the mandate was granted, it then became the duty of the League Council to define the conditions under which the mandate should be administered. The position was discussed in considerable detail in two documents laid before the Council at the end of July, 1920, and early in August. The first was a memorandum by the Secretary General dated July 30 and the second a report presented by the Belgian representative, M. Hymans, and adopted by the Council on August 5, 1920.¹⁰ There was no question of the Council attempting to *change*

⁸ League of Nations, *The Records of the First Assembly, Meetings of the Committees*, Vol. II (Geneva, 1920), p. 375. *For. Rels. U. S., Paris Peace Conference*, 1919, Vol. V, pp. 506-7.

⁹ *Minutes of the Twelfth Session of the Council of the League of Nations, held in Paris, in the Palais du Petit Luxembourg, from Monday, February 21st to Friday, March 4th, 1921*, L.N. Document 21/91/1, pp. 75-76.

¹⁰ League of Nations, *The Records of the First Assembly, Meetings of the Committees*, Vol. II, pp. 375-85.

Both documents recorded the action taken up to that point by the Principal Allied and Associated Powers in connection with the selection of the mandatory powers and the delimitation of the frontiers of the territories conferred on the mandatory powers. The conclusion of M. Hymans' report was as follows: "1. The Council decides to request the Principal Powers to: (a) name the Powers to whom they have decided to allocate the Mandates provided for in Article 22; (b) to inform it as to the frontiers of the territories to come under these Mandates; (c) to communicate to it the terms and the conditions of the Mandates that they propose

the allocation decided upon by the Principal Powers. It would merely take cognizance of the mandatory powers appointed by them and would notify each power that it had been invested with a mandate.

As pointed out above, there was one variant in the form of the decision of the Supreme Council of May 7, 1919, which might possibly have pointed to a more definite rôle by the League in the matter of allocation; namely, that the governments of France and Great Britain should make a joint recommendation to the Council of the League as to the parts of two territories over which each should have a mandate. The preamble to the text of the mandate for these two territories cited the fact that this joint recommendation to the Council had been made by the two governments and that they had "*proposed* that the mandate should be formulated in the following terms. . . ."

Nauru represented another variant. Whereas in the case of the New Guinea mandate the formula was "a Mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia to administer New Guinea," the Nauru mandate simply read, "a mandate should be conferred upon His Britannic Majesty to administer Nauru," without saying which government was to exercise the administration on behalf of His Majesty. There was no intention, however, of letting the mandate be run as a condominium, as might seem to have been suggested from this arrangement. The three British Commonwealth governments directly interested in the matter proceeded on July 2, 1919, to make a tripartite agreement between Australia, Great Britain, and New Zealand. Under this agreement the three governments vested the administration of the island for the first five years in the Australian Government, an arrangement which has continued up to the present time. The island, it may be remarked, is only twelve miles in circumference and has a little over a thousand native inhabitants; it is a plateau of high-grade phosphate surrounded by a narrow band of fertile soil on which nearly all the inhabitants live. Under Germany before the war the phosphates were mined by a British Company, the Pacific Phosphate Company, Ltd.,

should be adopted by the Council from following the prescriptions of Article 22. 2. The Council will take cognizance of the Mandatory Powers appointed and will examine the draft Mandates communicated to it, in order to ascertain that they conform to the prescriptions of Article 22 of the Covenant. 3. The Council will notify to each Power appointed that it is invested with the Mandate, and will, at the same time, communicate to it the terms and conditions." *Ibid.*, p. 385.

whose rights were bought out by the three governments and vested in the British Phosphate Commission, consisting of a representative of each of the three governments. A public corporation thus replaced a private monopoly. Under the tripartite agreement the three governments have the first claim on the use of the phosphates for their agricultural requirements, any surplus being sold at market prices.¹¹

This whole arrangement caused some discussion in the Mandates Commission and in the Third Assembly.¹² It was pointed out in both places that neither the Council of the League nor the Commission had been notified officially of the tripartite agreement. But in reply it was explained that this was an internal matter for the British Commonwealth. Australia was acting as an agent of the three governments which, in accordance with an agreement reached by the governments of the British Empire at Paris in 1919, had assumed responsibility for the territory and remained responsible for "all matters relating to major policy."

As will be seen from the table in section 3 above, the Supreme Council allocated the mandates and drew up the draft mandate texts in two stages. For the "B" and "C" mandates the allocation was made on May 7, 1919, and the texts were drawn up by a drafting committee in July and August of the same year.¹³ In the case of the "A" mandates, the allocation was made by the Supreme Council on April 25, 1920, Iraq and Palestine being assigned to Great Britain and Syria and Lebanon to France. By December, 1920, the League Council had all the information it had

¹¹ See Commonwealth of Australia, *The British Phosphate Commission: Report and Accounts for the Year Ended 30th June, 1921*, Parl. Paper No. 23, F.9259 (1922). This paper contains the text of the tripartite agreement.

¹² P.M.C. Min. II (1922), pp. 46-47; and *Mandates: Report Presented to the Assembly by the Sixth Committee* (Geneva, 1922), L.N. Document A.72.1922.VI. During the Third Assembly, all members of the British Commonwealth met to discuss Nauru, since the mandate was "a matter of responsibility of the whole British Empire in whose behalf the Mandate had been accepted, rather than of Australia or of any one constituent of the Empire." From the report to Parliament made by the Australian Delegates to the Third Assembly, Commonwealth of Australia, Parl. Paper No. 3, F.5668 (1923), p. 30. A trusteeship agreement for Nauru was submitted to the second session of the General Assembly of the United Nations, and was approved by the Assembly on November 1, 1947. For text, see below, Annex XIII (7).

¹³ The Commission, which sat in London and worked on drafts already prepared in June by Milner, was composed of House (U. S.), Milner (U. K.), Simon (France), Crespi (Italy), Viscount Chinda (Japan). *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. VI, p. 727. The "B" texts were adopted by the Supreme Council on December 24, 1919 (*ibid.*, Vol. IX, pp. 641-63). The "C" texts were held up on account of a Japanese reservation on the open door (mainly immigration). *Ibid.*, pp. 641-47, 663-65.

asked for in its resolution of August 5, 1920, namely, a notification from the Supreme Council as to the mandatory powers which the latter had appointed, the frontiers of the territories, and the draft mandate texts. With these steps, the main part of the rôle of the Supreme Council, as far as mandates were concerned, came to an end except for the negotiations by the United States with the individual mandatory powers (which resulted in the treaties mentioned in the table) and the drawing up of the terms of the Lausanne treaty of July 24, 1923. By December, 1920, the main rôle had become that of the League.

6. THE MANDATE TEXTS—"A," "B," "C"

The mandate charters were the basic law applying within the territories the principles of Article 22 of the Covenant. Each charter was in the nature of a treaty between the League and the mandatory which defined the terms upon which the mandatory had agreed with the Council of the League to advise or assist or govern the territory.¹⁴ Being treaties, the mandates could not be amended unilaterally, and each text specifically stated that it could not be modified without the consent of the Council of the League. Particular aspects of the three classes of mandates provided for in the Covenant are referred to at many points in this study and only a word need be said here.¹⁵

Each of the "A" mandates was more or less *sui generis*, designed to fit the particular condition of a particular territory. Thus, Iraq, as we have seen, was dealt with by treaty between itself and the mandatory rather than by a proper mandate, and became an independent state in 1932. Palestine, because of its racial and cultural dualism, could not attain the minimum of agreement between the different peoples necessary to achieve the "existence as independent nations" envisaged by the Covenant for all of the "A" mandates. But Trans-Jordan, with a more or less unitary society, after a slow but untroubled growth, achieved independence by treaty with the mandatory in 1946.¹⁶

The main points of difference and resemblance between the "B" and "C" mandates are referred to in previous pages and in Chapters XIV

¹⁴ Oppenheim, *op. cit.*, Vol. I, p. 185.

¹⁵ For detailed descriptions of the "A," "B," and "C" mandates, see League of Nations, *Ten Years of World Co-operation*, *op. cit.*, pp. 333-39; also League of Nations, *The Mandates System*, *op. cit.*, pp. 24-32.

¹⁶ See Annex XI, below.

and XV. The texts of the "C" mandates were practically identical. The main variant among the "B" mandates as a class was the special provision in the French mandates—based, however, on an understanding applicable to all the "B" mandates—whereby in a general war locally recruited forces could be used for defense of the territory outside the mandate.¹⁷ The main differences between the "B" and "C" types of mandate were (1) that the latter could be administered by the mandatory as an integral portion of his metropolitan territory, and (2) that the open-door provisions of the "B" mandates were omitted from the "C" mandates.¹⁸ The heart of both "B" and "C" mandates was the guarantees of Article 22, paragraph 5, of the Covenant; but these were spelt out in greater detail in the "B" than in the "C."¹⁹ The "B" mandates, however, had one important provision not specified in the "C" mandates, namely, protection of native rights in the matter of land legislation.

The "A" mandates, being highly specialized, had many individual variations. The following table, based on one left by Lord Lugard among his papers, illustrates the points of resemblance and difference between the mandates for Syria and Palestine.

¹⁷ See below, Chapter XVI, section 1, pp. 260-61; also above, p. 68.

¹⁸ P.M.C. *Min.* I (1921), p. 4. Confusion has risen from the fact that though the Covenant (Article 22, paragraph 6) used the term "integral portion" (*partie intégrante*) only in reference to the "C" mandates, the phrase "integral part" was used in the actual texts of the "B" mandates (save Tanganyika) as well as in the "C" texts. Its meaning in the former was not the same, however, as in the latter. In the "C" mandates it meant that the mandatory could administer the territory as an integral part of his metropolitan country. (The Supreme Council in December, 1919, interpreted "integral part" in the "C" mandates as incorporating the mandate into the "revenue and administrative system" of the mandatory. *U. S. For. Rels., Paris Peace Conference, 1919*, Vol. IX, p. 641.) In the "B" texts, on the other hand, it meant that the mandatory could govern it as an integral part of his adjoining territories. The phrase "integral part" was retained in the African trusteeship agreements. The United Kingdom explained that the phrase "did not involve administration as an integral part of the United Kingdom itself and did not imply British sovereignty in these areas." France and Belgium explained that the phrase was a matter of administrative convenience and was not considered as granting these countries the "power to diminish the political individuality of the Trust Territories." U.N., General Assembly, Document A/258, December 12, 1946, pp. 5-6. The phrase was dropped in the United Nations trusteeship agreements for Western Samoa and the Pacific Islands, but retained in the agreement for New Guinea, where it reads "as if it were an integral part."

¹⁹ See Chapters XIV and XV, below.

COMPARISON OF CORRESPONDING ARTICLES IN SYRIAN
AND PALESTINE MANDATES

ARTICLE NUMBER		SUBJECT OF ARTICLE
<i>Syria</i>	<i>Palestine</i>	
1	3	<i>Syria</i> : Organic law in three years, based on popular consent. Progressive development of Syria and Lebanon as independent states. <i>Palestine</i> : Article 3, to encourage local autonomy. Article 2, to establish Jewish National Home; and to develop self-governing institutions.
5	8	Capitulations abolished until mandate expires, then in force again.
3	12	Foreign relations controlled by mandatory; protection of citizens abroad.
4	5	No part to be leased or placed under control of a foreign power.
6	9	Judicial system to assure rights of foreigners and natives, and of their religious interests, including Wakfs.
7	10	Extradition treaties remain <i>pro tem</i> .
8	15	Freedom of conscience and worship; no discrimination on account of differences of race, religion, or language. Education to be in native languages (Syria).
9	13	Immunity of holy places and shrines. Mandatory may arrange with Administration of Palestine (vested by Article 1, by which the mandatory has full powers of legislation and administration).
10	16	Freedom of religions under supervision of mandatory.
11	18	Open Door, free trade, development, taxation; government monopolies allowed for fiscal purposes or development (Syria).
12	19	To adhere to conventions on slave trade, drugs, arms, economic equality, aerial, postal, wireless, copyright.
13	20	Cooperation with League in common policies regarding health, animals, and plants.
14	21	Antiquities pre-1700; Law to be made within 12 months.
2	17	Mandatories given right to use ports and railways for passage of their own troops and supplies. Recruitment of local armed forces: Syria, local recruits; Palestine, volunteers.
16	22	Official languages: French and English in Syria; English, Arabic, and Hebrew in Palestine.
17	24	Annual Report to League Council, to its satisfaction; with copies of new laws and decrees.
18	27	No change in mandate without consent of Council of League of Nations.

ARTICLE NUMBER		SUBJECT OF ARTICLE
<i>Syria</i>	<i>Palestine</i>	
19	28	Any later government to be responsible for financial pledges (pensions, etc.).
20	26	Disputes to be referred to Permanent Court.
<i>Special Syria</i>		
	1	Organic law.
	15	Repayment of costs to mandatory by territory on coming into force of organic law.
	8	Education in native language.
<i>Special Palestine</i>		
2, 4, 6, 11	a	Jewish National Home.
	7	Palestinian citizenship.
	14	Commission to define rights and claims regarding holy places.
	23	Holy days of respective communities to be recognized as legal days of rest.
	25	Special provision for administration of Trans-Jordan.

7. THE STEPS TAKEN BY THE LEAGUE

Over seventeen months were to elapse after the framing of the Covenant before the machinery of the League began to work in connection with the mandates. The League, together with its Covenant, including Article 22, came into being on January 10, 1920. The memorandum of the Secretary General of July 30, 1920, to the Council on the mandate system and the report of M. Hymans of August 5, referred to above, were the first public signs of the working of the League system. These reports amounted, as we have seen, to an admission to the Principal Powers that the League was still waiting on them to inform it regarding allocation, frontiers, and the draft terms and conditions which the powers proposed. The system could hardly be said to be in full working operation until the Permanent Mandates Commission had actually begun to function. And this did not take place until October 4, 1921, just over two years after the signing of the Treaty of Versailles. Even at that late date the "B" mandates had not yet been confirmed, and this did not actually take place until nearly a year later, July 20, 1922. The "A" mandates came into effect provisionally on July 24, 1922, and it was not until more than a year later, on September 29, 1923, that they came fully into force.

The League's rôle in setting up the mandate system may be described under two main headings: first, the confirmation of the mandates which involved a series of separate actions; and, secondly, the setting in motion of the general League machinery to handle problems in relation to mandates in accordance with the rôles assigned to the League organs under the Covenant and the creation of the special organ provided for in Article 22, paragraph 9—the Permanent Mandates Commission.

(a) *Confirmation of the Mandates*

The facts involved in confirmation of the mandates are indicated in the table above. The receipt of the draft mandat^r' texts in December, 1920, was a signal to the League that its active rôle could now begin. The Council examined the texts, with the aid of the Legal Section of the Secretariat, made some slight amendments in them, and confirmed the "C" mandates on December 17. It was at this point that the "C" mandates entered automatically into force. The Council then took the other steps provided for in M. Hymans' report of August 5. It took official cognizance of the appointment of the mandatory power, through its Secretary General it informed the mandatories that they were invested with a mandate; and it communicated to them the terms of the mandates. Thus, in the case of Australia the Secretary General, in a letter dated February 17, 1921, transmitted to the Australian Government the certified copy of the mandate for New Guinea (together with certified copies of the other "C" mandates). The mandate is referred to in the letter as "conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia . . . as defined by the Council of the League of Nations at its meeting on 17th December, 1920."²⁰

The "A" and "B" mandates were to have been confirmed at the next meeting of the League Council. But on receipt of the protest made directly to the Council by the United States on February 21, 1921, asking postponement of confirmation until American views could be ascertained, the Council decided on March 1 to defer action. It invited the United States to take part in a discussion of the text at the next session, an invitation which was neither answered nor accepted by the American Government. The United States then turned to direct negotiation with

²⁰ Commonwealth of Australia, *A Selection of Papers Printed by the League of Nations relating to the Mandatory System (Especially those relating to C Mandates)*, 1920-1922, Parl. Paper No. 41, F.10729 (1923), p. 13

the mandatory powers while the Council and the Assembly waited and contented themselves with expressions of regret at the delay. It was not until the middle of the next year that the negotiations had advanced far enough for the Council to take action. The "B" mandates were confirmed by the Council on July 20, 1922, and automatically entered into force. The "A" mandates were confirmed tentatively by the Council four days later, subject to an agreement between the French and Italian governments regarding Syria. On the conclusion of an agreement between these two governments, the "A" mandates, Palestine and Syria, entered into force a year later, on September 29, 1923.

What was the significance of confirmation of the mandates from a legal and constitutional point of view? The terms of the mandates help to supply an answer. The mandates, e.g., that for Nauru, began by stating in the preamble the steps taken leading up to confirmation, namely, cession of the territory to the Allies, their agreement to confer a mandate on His Britannic Majesty "formulated in the following terms"; the acceptance by His Majesty of the mandate and his undertaking to exercise it on behalf of the League in accordance with its provisions. The text then cited the terms of paragraph 8 of Article 22. "The Council of the League of Nations," it went on, "confirming the said Mandate, defines its terms as follows: Article 1. The territory over which a mandate is conferred upon His Britannic Majesty . . . is the former German island of Nauru. . . ." In other words, as M. Hymans had put it, with the emphasis of italics, in the report of August 5, 1920, adopted by the Council, "although the Mandatory Power is appointed by the Principal Powers, it will govern *as a Mandatory and in the name of the League of Nations.*" Article 22, paragraph 2, expressly said that the mandatory powers shall exercise their powers "as Mandatories on behalf of the League." It was not enough that the mandatory powers should be appointed; as M. Hymans' report put it, "they should also possess a *legal title.*" "It logically follows," he went on, "that the legal title held by the Mandatory Power must be a double one: one conferred by the Principal Powers and the other conferred by the League of Nations."

The fact that the mandate was a League mandate, that the League had a responsibility for its terms, was emphasized by the amendment clause in each to the effect that "the consent of the Council of the League of Nations is required for any modification of the terms of the present mandate." This did not mean that the Council acting alone had the power

of amendment. The consent of the mandatory was also required; and possibly the initiative lay with the latter rather than with the former.²¹

There was a further question (discussed at length in the Hymans report, as well as in the memorandum of the Secretary General of July 30, 1920) which remained theoretical, since the contingency envisaged did not actually arise. What would be the responsibility of the League Council if the Allied Powers failed to come to an agreement to name the mandatories and to define the terms of the mandates? "It is already," the Secretary General pointed out, "six months since the provisions of Article 22 came into force, and the matter cannot be indefinitely deferred." He held that if the Council did not receive the draft mandates it must itself take action to draw up the mandates.

The Council, in its report to the First Assembly on the responsibilities of the League arising out of Article 22,²² represented itself as having taken a very firm line in the matter: "The Council decided that it was in the last resort itself responsible for approving, and if necessary for drawing up, the terms for the Mandates. . . . If such proposals were not made within a reasonable time it would be obliged to act on its own responsibility." It also took the line in this report that the proposals made to it by the powers in the draft mandates were in the nature of "suggestions." Language of this kind did not dispose of the difficulties in the way of such action. Both M. Hymans and the Secretary General had pointed out, and the Council had agreed, that so far as the Turkish territories were concerned nothing could be done by the League until the Turkish treaty had been finally signed. Moreover, there was a practical difficulty in the way of the exercise by the Council of any theoretical right of defining itself the terms of the mandates, if not actually nominating the mandatory powers. It would still have to solve the same political troubles which had confronted the Allied Powers and had caused the delays of which it complained, namely, the difficulty of securing the agreement of the United States and of dealing with the reservations made by France and Japan. Indeed, the Secretary General had explicitly recognized this in his memorandum. Moreover, he had pointed out that the Council, even when it had drafted its mandates, would still have to get the Allied Powers "to draw up the necessary acts conferring definitive rights of authority and administration upon the Mandatory Powers whom they had selected."

²¹ Cf. Wright, *Mandates under the League of Nations*, op. cit., p. 117.

²² December 6, 1920. L.N. Document 20/48/161.

Thus, while in theory the Covenant appeared by Article 22, paragraph 8, to give the League Council in this matter much greater power than the Charter gives to the General Assembly and the Security Council of the United Nations, yet there might in practice be no great difference between Covenant and Charter in this respect. For in both cases the general international organization could hardly hope to act without first securing the agreement of a series of interested parties: (1) the occupying power; (2) the state most directly concerned, namely, the mandatory or trustee state, which was to shoulder the burden; (3) the Allied Powers and/or the mysterious "states directly concerned."

(b) *Part Played by Different League Organs*

In the setting-up of the system, the *Secretary General* played a much bigger rôle than the single purely formal one assigned to him in the legal texts, namely, that of transmitting certified copies of the mandates to the governments when confirmed by the Council. In fact, he acted long before this stage in his general rôle as head of the Secretariat and executive officer of the Council and Assembly. As an important part of the League machinery was not working, he took the initiative toward remedying the situation by seizing the Council of the whole question in his memorandum referred to above of July 30, 1920. Five days later the Council charged him with the important duty of preparing, on the basis of M. Hymans' report, a draft scheme for the organization of the Permanent Mandates Commission—a matter not defined by the Covenant though it is covered in the Charter (Article 86). A first draft drawn up by him was rejected by the Council, but the second, submitted through M. Hymans on November 26, was accepted. Following the confirmation by the Council of the "C" mandates, the Secretary General transmitted them to the members of the League, in accordance with the instruction to him contained in the last article of each of the mandates. Most important perhaps of all, he had taken steps to set up, even before the Covenant actually came into force, the Mandates Section of the League Secretariat. Professor W. E. Rappard, as the first Director, acted as secretary of the first meeting of the Commission in October, 1921.

The nature of the *Council's* rôle has been referred to in discussing the confirmation of the mandates. The Council alone, under Article 22 and

the texts of the mandates, was assigned specific functions. Upon it fell the main responsibility for the action involved in getting the system into working order, such as conducting negotiations with the Allied Powers and the proposed mandatories, confirming the mandates, taking "cognisance" of the mandatory states appointed by the Allies. According to Article 22 of the Covenant and the corresponding article of each mandate, an annual report by each mandatory was to be rendered to the Council. Finally, it had to set up the Mandates Commission, which was to examine the annual reports and "to advise the Council on all matters relating to the observance of the mandates" (Article 22, paragraph 9). On receipt of such advice the Council had to decide what action, if any, was appropriate. By the end of 1921 the Council had duly exercised all these rôles. (Under the United Nations Charter these rôles were assigned to the General Assembly and the Trusteeship Council as its agent.)

The *League Assembly* played from the outset at its first meeting the rôle that was to be characteristic of it in relation to mandates right through the life of the League. It left action mainly, if not entirely, to the Council and confined itself to general principles and policies. It took the lead in the maximum interpretation of the mandate idea, gave steadfast support to the Mandates Commission, spurred on the Council, and, by assuring wide publicity, focussed the public opinion of the world upon the mandate system. Though all the specific functions in connection with mandates were assigned by the Covenant and the mandate texts to the Council, the Assembly asserted its right at its first session to discuss mandates by virtue of the general competence it shared with the Council under the Covenant to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world" (Article 3, paragraph 3). Opportunity for such a discussion was afforded by the Council's memorandum to the Assembly dated December 6, 1920. This explained the steps so far taken by the Council to start the mandates system working, and intimated that *action* on mandates was the competence of the Council. The Assembly, after a debate in plenary session, referred mandates to its Sixth Committee. The latter's report emphasized the importance attached by the Assembly to the system, and submitted to the Council a series of suggestions on various points connected with the working of the system.

8. THE DECISION ON THE MANDATES COMMISSION—GOVERNMENTS OR PRIVATE EXPERTS?

The main stages in the setting-up of the Permanent Mandates Commission were indicated in the table above. The drawing-up of its constitution required four months of work and discussion on the part of the Council and Secretariat. It was the subject of some half-dozen memoranda and reports by the Secretary General and rapporteur, and occupied the Council on almost as many occasions. Few, if any, of the League bodies could have had so much attention or care bestowed on them in their formative stages. The problems that emerged and the nature of their solution were to become again of considerable interest in the similar transition that faced the United Nations in 1945-47.

The whole four months of discussion in 1920 really turned on the problem of how to reconcile two objectives: first, to constitute the Commission in such a way as to secure the full support of the mandatory powers, for without this it could neither work nor live; second, to avoid making the mandatory judges in their own cause by allowing them to pass judgment upon their administration of their own mandates. Both objectives had to be secured without making the Commission unworkable. The first objective seemed to all concerned—rapporteur, Secretary General, and Council—to involve having all the mandatory powers directly represented in the Commission. The Council accepted the view, as put by Mr. Balfour on August 4, 1920, that since the mandatorys had to present facts, give opinions, and submit memoranda, they must be "admitted within the Commission, at all events as witnesses";²³ or, as M. Hymans phrased it in his report adopted by the Council next day, "in order that the Commission should have proper information, it should include amongst its members a delegate from each Mandatory Power." The Secretary General reproduced the same argument in his proposed constitution presented to the Council on October 12, and repeated it during the Council's further discussion of his plan on November 14.²⁴

On the other hand, if the mandatorys were to be members of the Commission, how avoid their being both "judges and parties"? M. Hymans on August 5 had answered that they would not make judgments

²³ *Procès-verbal of the Eighth Session of the Council of the League of Nations, Held in San Sebastian, from July 30th to August 5th, 1920, L.N. Document 20/29/14, p. 43.*

²⁴ These documents are printed in *League of Nations, Records of the First Assembly, Meetings of the Committees*, Vol. II, pp. 371-97.

but merely recommendations. But to ensure the "impartiality of the recommendations" he proposed two expedients: (1) a mandatory, though a member of the Commission, should not vote or express a judgment on the carrying out of his own mandate; (2) the Commission should have a majority of members not representing governments but appointed by the Council as experts in a private capacity. Thus, as against seven government delegates for the seven mandatory powers, there would be eight experts serving in a private capacity as full members of the Commission. The Secretary General on October 12 proposed that names of experts should be put forward by non-mandatory states and that the Assembly—not the Council—should make the actual appointments. The Council, however, refused (October 23) to hand over to the Assembly the duty of nomination which the Covenant seemed to assign so clearly to the Council itself.

Yet the Council was troubled with doubts whether a Commission thus composed would really be workable. It would contain two rather incompatible elements: Government representatives, with limited voting rights but full access to government information, would be confronted by a group of private individuals not responsible to any government and thus limited in their access to information. But the latter would be supposedly superior in impartiality and would serve as watchdogs over the mandatories; they would be free to vote on all matters and would have a permanent majority of at least two on any issue involving a particular mandate.

The upshot of the argument was that the eight private persons displaced the government representatives. The eight were increased to nine, the majority to be nationals of non-mandatory states. The mandatory powers ceased to be members of the Commission. Instead of being present in it as a group they were brought back into it as individual states one by one for the discussion of their particular territories and no others.²⁵

Thus the problem was solved by the invention of a new expedient, that of the Accredited Representative who could give the Commission all the direct cooperation and information which the Council and the Secretariat had rightly judged from the beginning to be essential to the success of the mandate system. This the Council decided on November 26.

²⁵ On the point that the mandatory power had the right to be present only for the discussion of his own report and no others, see P.M.C. *Mm.* II (1922), p. 9. As a matter of courtesy an accredited representative was allowed sometimes to listen to the examination of other reports than his own.

Each of the mandatory powers, as M. Hymans summarized the decision, "should present its annual report to the Council, which should be submitted by a duly authorized representative, who would take part in the discussion of the report, and furnish the Commission with any further explanations and information that might be required." To this the Council added, at the suggestion of its British member, Mr. Balfour, that the Commission's own report, based on the examination of the annual report, should be sent to the accredited representative for his comments, which should accompany the Commission's report when submitted to the Council.

The full constitution of the Permanent Mandates Commission as elaborated by the Secretary General on this basis was adopted by the Council on November 29.²⁰

On December 18, the Assembly made two further suggestions: first, that the Commission should contain at least one woman; second, that the members should not be dismissed without a majority vote of the Assembly. The nine members of the Commission were appointed by the Council February 22, 1921, and met for their first session, opened by the Chinese President of the Council, Mr. Wellington Koo, on October 4, 1921, at the end of the meeting of the Second Assembly. The Commission's first report to the Council was presented by its chairman to the Council on October 10. The principal achievements of this first meeting were the *draft rules of procedure* (confirmed by the Council on January 10, 1922), the *questionnaire* which served as a rough "Form of Annual Reports" for the guidance of the mandatory powers, and the beginning of the procedure of examining the annual reports. The Commission thus launched was not the provisional body, to hold office until the Second Assembly, which the Secretary General had envisaged in his report of October 12, 1920. The difficulty foreseen in M. Hymans' report—how to appoint members "before it is known which are the various Mandatory Countries"—was the same difficulty that in 1945-46 defeated all attempts to set up a temporary trusteeship committee. With the agreement on fundamentals that existed in 1920, and the lack of any rigidity in the matter of procedures, this would not have given real trouble, and in any case it disappeared with the decision to set up a Commission composed of private experts.

But the situation the Commission itself had to handle was still provisional. The transition was not yet ended. The "A" and "B" man-

²⁰ For the text, see below, Annex VI.

dates were not confirmed till the latter part of 1922. Nevertheless, the mandatory powers had readily acceded to the wish of the Assembly, confirmed by the Council in June, 1921, that they should submit reports in advance of confirmation of the mandates. The Commission when it first met thus had before it British reports on Tanganyika, Palestine, and Iraq; French reports on the Cameroons and Togoland; a Belgian report on Ruanda Urundi; and one by South Africa on South-West Africa.²⁷ After discussing its rules of procedures, therefore, it could begin at once on its principal task under the Covenant, that of examining the reports of the mandatory powers. These reports were provisional. They had been submitted voluntarily by the governments as a matter of courtesy and good-will without any obligation on their part. The Commission therefore made no comment on them otherwise than to express to the Council its "admiration for the magnificent and generous effort at colonial reorganisation and reconstruction which they show." The chairman explained to the Council at the same time the spirit of cooperation with the governments in which the Commission would do its work: "Whilst supervising the strict observance of the . . . Covenant," he said, "we shall endeavour to exercise our authority, less as judges from whom critical pronouncements are expected, than as collaborators who are resolved to devote their experience and their energies to a joint endeavour."²⁸

The endeavor became fully joint at the second session in August, 1922, when the Commission had to deal with the first regular annual reports made under the Covenant—those for the "C" mandates—in the presence of the accredited representatives of the mandatory powers concerned. At this point the transitional stage may be said to have ended. The early maturity of the Mandates Commission was commented on above.²⁹ As between this second session and the thirty-seventh and last session of the Commission, there was a difference of atmosphere, but no great difference of substance, and still less in methods and procedures.

²⁷ P.M.C. *Min.* I (1921), p. 6. The Trusteeship Council at its first meeting in March, 1947, was unable in the absence of provisional reports (save for Western Samoa) to get much beyond the problems of its own organization and procedures. It could however examine petitions.

²⁸ L.N., *Official Journal*, 1921, p. 1125.

²⁹ Chapter IV, section 4.

PART III

THE WORKING OF THE LEAGUE MANDATE SYSTEM

CHAPTER XI

THE LEAGUE MACHINERY—SECRETARIAT, ASSEMBLY, COUNCIL

I. THE FUNCTIONS OF THE SECRETARIAT

The Mandates Section of the Secretariat played an important, if anonymous, rôle. In reply to the thanks given at the first session of the Commission to the Secretariat, Professor Rappard, the first Director of the Mandates Section, asked, "Does a man owe gratitude to his pen?" Perhaps the words were truer of the Mandates Section than of most sections of the Secretariat, since most of the other sections had a sprinkling of experts with practical experience in the fields with which they were dealing. With one or two exceptions, this was not the case with the Mandates Section. The policy of confining the secretariat of the Commission to officials who were not nationals of mandatory or even colonial powers made it difficult for the Secretariat to recruit for this section experts with a wide knowledge of colonial problems, much less a practical knowledge of colonial administration. The Commission itself made up for this deficiency since it usually had as members several outstanding experts in the field with long practical experience, a situation which would tend to confirm the Secretariat in its rôle of "pen." On the other hand, the members of the Secretariat were experts in League procedures and had custody of the stock of League experience. By a useful division of functions between the Commission and the Secretariat, the members of the Secretariat became experts on particular territories, whereas the members of the Commission specialized on particular questions affecting all the territories.

The Mandates Section was one of the smallest of the Secretariat, never consisting of more than a Director or Chief of Section, two to four members of section, with four to six junior staff members. Its three heads during its active life were: Professor W. E. Rappard (Swiss), M. Catastini (Italian), and M. de Haller (Swiss).

Some of the principal duties of the Mandates Section were outlined in the League Budget Statement for 1926,¹ as follows:

¹ L.N. Document C.619.M.201.1925.X.

(a) To prepare the work of the Council and of the Assembly on this question [Mandates];

(b) To correspond with the Governments of the Mandatory Powers,

(c) To serve as a permanent secretariat for the Mandates Commission, which meets twice a year;

(d) To collect and classify . . . data in public and private documents on the mandated areas, the policy of the Mandatory Powers with regard to these areas, and general questions of colonial administration.²

The real rôle of the Secretariat was more important than would appear from such an outline. It was the main, if not the only, link between the Mandates Commission, the Council, the Assembly, and even, in some degree, the governments, although in the latter case the Mandates Commission had its own direct link through the accredited representatives of the mandatory powers. Correspondence of the Section with the governments of the mandatory powers was mainly of a formal character, e.g., in respect of annual reports and other official documents, reminders of the due dates for receipt of annual reports, arrangements for sessions of the Commission. It was the Secretary General who conveyed to the mandatory governments the formal decisions of the Council.

Preparation of the work of the Council and the Assembly on mandates involved preparation of the rapporteur's report and discussion with him and other members of the Council, and preparation of the Secretary General's report to the Assembly. The securing of an agreed report and resolution for Council and Assembly usually involved the Secretariat in real negotiations.

The work of the Mandates Section for the Commission itself was of a varied character. It was the one means whereby contact was maintained with the members of the Commission between the sessions. The Secretariat circulated official documents to the members of the Commission. It also sent them monthly dossiers of documentary material on mandates, of a non-official character, such as articles in journals and newspaper cuttings. Materials of this non-official kind were formidable in bulk and often of doubtful value.

The Section formally acknowledged the receipt of petitions. By resolution of the Council on September 15, 1925, the decisions of the

² Quoted in Egon F. Ranshofen-Wertheimer, *The International Secretariat; A Great Experiment in International Administration* (Washington: Carnegie Endowment for International Peace, 1945), p. 116.

Council on petitions (based upon the conclusions of the Mandates Commission) were to be communicated to the petitioners and the mandatory powers by the Secretary General. The usual practice was to send the observations of the Commission direct to the petitioners, while a copy of the Secretary General's letter was sent to the mandatory power concerned. In some cases, however, the mandatory power would be used as the channel back to the petitioner. It was the duty of the Section to make a preliminary study of petitions coming from sources other than inhabitants, to examine them from the point of view of receivability, and to report to the chairman of the Commission. The chairman took decisions on such petitions on the advice of the Section.

The agenda for the meetings of the Commission were prepared by the Mandates Section. All the practical arrangements in connection with the actual meeting of the Commission were also made by it. Besides performing formal secretarial functions of this kind, including the important aspect of the arrangements for the attendance of the accredited representatives, the Secretariat gave research and technical assistance to the Commission. It assisted in the preparation of the opening speech of the chairman on the outstanding events since the last session of the Commission. It prepared the opening statement of the head of the Mandates Section on the work of the Secretariat since the last meeting. This was a partial substitute for the formal progress report presented in other League commissions, such as the Opium Advisory Committee. A more than adequate substitute for such a progress report was the series of briefs prepared by the Mandates Section for each of the members of the Commission on particular questions in connection with annual reports and petitions. The Secretariat studied each annual report in advance and prepared a series of questions on it for the use of the members of the Commission, the questions being distributed among them according to their different specialties. Thus, the member of section responsible for the Syrian Report of 1930 prepared a set of fifty questions, with a brief on each. Some of the briefs and draft reports on petitions ran to a fair length. An example of such a secretariat draft, which was used without change by the member of the Mandates Commission concerned, was the report on the Kurdish petition.³ The number of secretariat briefs prepared was very large. These notes were never circulated officially nor filed in the registry, being regarded as internal and confidential papers between members of the Commission and of the Secretariat.

³ L.N. Document C.P.M.1118, P.M.C. *Mém.* XIX (1930), pp. 191 ff.

The Section also prepared draft reports on petitions for the rapporteur to use in the Commission and to be appended to the report to the Council. It prepared drafts of the observations of the Commission on particular territories. It played a major part in the drafting of the report to the Council and was responsible for editing the minutes of the Commission.

Finally, the Section assisted the Council, prepared the draft rapporteur's note for the Council, together with drafts of Council resolutions, and conducted the necessary discussions with Council members in order to secure agreement. It also assisted the Assembly in its work on mandates, particularly in connection with the discussions in the Sixth Committee.

The "C.P.M." series of mimeographed documents gives some measure of the activity. The number of documents ran to some 2180 papers of an extremely varied character, including, for example: important communications from governments, petitions, observations by governments on petitions, occasionally laws and decrees, memoranda by members of the Commission.

The work of the League Secretariat in connection with slavery was also performed by the Mandates Section. Thus it acted in connection with the Temporary Slavery Committee of 1924, the Committee of Experts on Slavery appointed by the Assembly in September, 1925, and the Advisory Committee of Experts on Slavery appointed by the Assembly resolution of October 12, 1932, which held in all five sessions.⁴ It carried out the secretarial duties involved in the Slavery Convention of September 25, 1926, namely, the receiving and classifying of information supplied by the parties under Article 7 of the convention, and reporting to the Assembly each year.

The budget at the disposal of the Mandates Section was small. It averaged about 220,000 Swiss francs a year. Of this amount, about 160,000 were for salaries of officials, 38,000 for the sessions of the Mandates Commission, and the remainder for administrative expenses. It may be remarked here that there was no reserve in such a budget that would finance visits by members of the Secretariat or members of the Mandates Commission to the territories. The possibility of such visits was contemplated when the mandates system was first set up, but there was no definite basis for such visits in either the Covenant or the man-

⁴ See below, Chapter XV.

dates texts and they were not looked upon with any favor by the Assembly. No budgetary provision was ever made for them by the Assembly.⁵

In a real sense the League organization was a unity. All parts of the League served each particular part. As we shall see below, the Mandates Commission was dealing with the most diverse issues affecting a large group of territories, with many of which special organs of the League (e.g., those dealing with dangerous drugs, health, transit, and other matters) were concerned. The Commission received assistance, therefore, from these organs, as well as from the corresponding sections of the Secretariat. It had naturally at its disposal all the essential central sections of the Secretariat, such as the Political and Legal Sections.

In principle the *Secretary General* was the Secretariat. He was Secretary of the Council and of the Assembly, and the secretaries of all committees served him as deputies. Rule No. 1 of the *Office Rules* of the Secretariat began with the statement, "All decisions in the Secretariat are taken by the Secretary General or under his authority." It went on to refer to the draft rapporteur's notes prepared by the different sections of the Secretariat. "The drafts of reports for Rapporteurs to the Council," it laid down, "shall be submitted to the Secretary-General before they are submitted to the Rapporteurs concerned."⁶ Thus, the consultation with the rapporteur by the head of a section could take place only after clearing with the Secretary General. Consultation with the rapporteur was no mere formality, and often involved long journeys on the part of the Secretariat, as in 1930, when M. Catastini and M. de Haller traveled to Bucharest to see M. Titulesco.

The League Secretariat owed its influence to its objectivity and its efficiency. Its members had no private policies. The submission of formal proposals was a matter exclusively for the members of the Commission or the Council. There could thus be no formal submission of a Secretariat resolution, such as was possible in the first General Assembly of the United Nations.

⁵ M. Rappard, first Director of the Mandates Section, made a visit in a private capacity to Palestine, and two officials of the Section accompanied the mission of observers sent by the Council in 1936-37 to the Sanjak of Alexandretta (Syria). A member of the Mandates Section (Mr. Peter Anker) was secretary of the Commission for the organization and supervision of the elections in the Sanjak of Alexandretta in 1937-38.

⁶ League of Nations, *Secretariat Office Rules* (Geneva, 1936), p. 7.

2. THE FUNCTIONS OF THE ASSEMBLY

The report by the Secretary General to the Assembly on all League matters provided for by resolution of the Assembly on September 29, 1922, formed the basis of the Assembly's discussions, including those on mandates. The report was to be on "the work of the Council since the last session of the Assembly, the work of the Secretariat, and on the measures taken to execute the decisions of the Assembly." It summarized the observations on the administration of the territories made by the Commission as a result of its examination of the annual reports. The Assembly had before it, however, not only the general summary made by the Secretary General of the work of the Mandates Commission and the Council, but also the documents of the Commission itself, including its report to the Council and its minutes. The practice was to issue these documents also as Assembly documents.

The Assembly, therefore, had ample basis for discussing the mandate question in the general debate which took place on the Secretary General's report. This general debate was in the nature of the debate on the address in reply of British parliamentary procedure. The right of the Assembly to discuss mandates (although neither the Covenant nor the mandate texts mentioned the Assembly in connection with mandates) was established at the First Assembly. The two working rules then laid down were (1) that the Assembly had the right to discuss mandates as part of its general competence; (2) that "neither body [i.e., neither the Assembly nor the Council] has jurisdiction to render a decision in a matter which has been expressly committed to the other organ of the League." Thus the Assembly would be precluded from rendering a decision but not from discussing or making suggestions. The First Assembly made no less than seven recommendations to the Council on the question of mandates. Three of these concerned such matters as the composition of the Mandates Commission (no member should be dismissed without the assent of the Assembly; the Commission should contain at least one woman) and presentation of a provisional report by the mandatories. Other recommendations, relating to "A" mandates, provided that an organic law should be passed in the mandated territories as soon as possible; and that the mandatory should not be allowed to abuse its position either from an economic or military point of view.

The Assembly had a permanent majority of non-colonial powers which

found an opportunity in the mandates discussion to criticize colonial governments. Since such criticism in the full Assembly received the widest publicity, it could be a political weapon of some importance. Thus, in 1925, criticism of French policy regarding Syria was in part responsible for the recall of General Sarrail.

Except at the First Assembly, the question of mandates was not put automatically on the Assembly's agenda. The practice adopted at the second and subsequent meetings was that at some point, usually several days after the opening of the Assembly, a special resolution was proposed (usually by the representative of Norway) to refer all the relevant documents on mandates to the Sixth (Political) Commission of the Assembly. A typical resolution was that of 1925. "The Assembly, following the precedent already established in previous years, decides to refer to the Sixth Committee the annual reports of the mandatory Powers, the reports of the Permanent Mandates Commission, and all other relevant documents on the mandates question which have been distributed to the Members of the League since the fifth Assembly."⁷

The Assembly's agenda was drawn up by the Secretary General in accordance with the rules of procedure of the Assembly. These did not require the putting on the agenda of the regular so-called "technical items." The agenda of the Eighteenth Ordinary Session of the Assembly⁸ illustrates this procedure. Item 2, "Report on the Work of the League since the Last Session of the Assembly," was accompanied by an explanatory note by the Secretary General: "The Assembly from time to time refers to the appropriate Committee portions of this report dealing with questions which do not appear separately on the agenda." Mandates was one of the regular chapters in the report; others were economic and financial work, health work, protection of minorities, etc. The fact that mandates was always singled out for addition to the agenda as a special item indicated the importance attached to it by the Assembly.

It was in the Sixth Committee, however, that the principal discussion of mandates usually took place. An analysis of a typical debate throws a good deal of light on the practical working of the mandates system.

⁷ Sixth Assembly of the League of Nations, *Mandates; Draft Resolution presented by the Norwegian Delegation at the meeting of the Assembly held on September 12th, 1925*, L.N. Document A.56.1925.

⁸ *Agenda of the Eighteenth Ordinary Session of the Assembly Which Will Open at Geneva on Monday, September 13th, 1937, at 11 A.M.* (Geneva, 1937), L.N. Document A.2(1).1937, p. 1.

We may take as an example the minutes of the Sixth Committee of the Assembly in 1929 and its report to the Assembly.⁹ The discussion was opened as usual by Dr. Nansen, with a progress report on the year's work. He opened the discussion as representative of the delegation which had proposed to add mandates to the agenda. He was usually appointed rapporteur at a later stage by the Commission. The Sixth Committee welcomed with great satisfaction the growing practice, on the part of the mandatory powers, of being represented at the Permanent Mandates Commission "either by the Governors of the mandated territory in question or by high officials." Four high commissioners or governors and five other high officials had been present during the examination of the reports in the preceding year. Dr. Nansen started a controversy by saying that the Council had "definitely settled" the point that a "mandatory Power could, under its mandate, have no 'sovereignty' in the normal sense of the word in a mandated area." The South African delegate denied that the Council had made any such pronouncement. This led on to an assertion by the Italian representative that "the essential characteristic of the mandate . . . was its temporary nature." In this he was supported by the German representative, but opposed by other delegates, including those of France and New Zealand, the latter protesting that such talk created dangerous uncertainty. Two members of the Mandates Commission, present in the Sixth Committee as representatives of their countries, M. Rappard (Swiss) and M. Palacios (Spanish), supported the view that mandates were essentially temporary. M. Rappard had no instructions from his government on the question of mandates, nor could he speak for the Mandates Commission; but he supported before the Committee not only the view that mandates were temporary, but that the mandatory power did not possess sovereignty. He also gave support to the idea of extension of the mandate system. Still a third member of the Mandates Commission was present as an Assembly delegate, namely, Count de Penha Garcia, delegate for Portugal. A certain number of the Assembly delegates had frequently appeared before the Mandates Commission as accredited representatives of their countries. Thus, the accredited representatives for South Africa, Australia, New Zealand, and Japan were present as delegates of their countries in the Sixth Committee.

This debate illustrates the interrelationship between the various parts of the League machinery and the close liaison between the Mandates

⁹ L.N., *Official Journal*, Special Supplement No. 81 (Geneva, 1929).

Commission, the governments, and the Assembly, as well as the Council. This interlocking between the various League bodies is an essential feature which has to be taken into account in any study of the mandates system.

The report of the Sixth Committee to the Assembly, summing up this discussion,¹⁰ stated: "The Committee recognises that, thanks to the efforts of the mandatory Powers and the impartial and authoritative assistance of the Permanent Mandates Commission, the mandates system has already yielded excellent results. . . . The Permanent Mandates Commission must always be the central organ in this system, and its members may have full confidence that the Assembly will continue in the future to give them its full confidence and support as it has in the past." The three-fold emphasis of this passage—the tribute in the first place to the mandatory powers, the reference to the Commission as the central organ, and to the *assistance* given by it to the mandatories, and the Assembly's pledge of support—constituted typical features of the annual Assembly's resolutions on mandates. The Assembly did not, however, confine itself to such generalities. It added, not infrequently, recommendations relating to particular questions such as the Bondelzwarts incident in South-West Africa (1922), particular situations in Palestine or Syria, or questions like the liquor traffic in the "B" and "C" mandates.

3. THE FUNCTIONS OF THE COUNCIL

League supervision over the administration of mandated territories was carried out principally by the Council, advised and assisted by the Permanent Mandates Commission. The specific functions assigned to the Council by Article 22 of the Covenant and the mandate texts, regarding confirmation and definition of mandates, amendments to the mandates, appointment of the Mandates Commission as its advisor and action on that advice, and the annual reports to be made to it by mandatory powers "to the satisfaction of the Council," have been referred to above.¹¹ The document issued by the League Secretariat in 1938, celebrating the hundredth session of the Council, and dealing with its composition, competence, and procedure, stated the competence of the Council as regards mandates as follows:

¹⁰ L.N., *Official Journal*, Special Supplement No. 81, Annex 2, pp. 37-38.

¹¹ See Chapter X.

. . . the Council drew up the terms of the charters which bind mandatory Powers and responsibility for control assumed by the League is based on those instruments. The Council appoints the members of the Permanent Mandates Commission. It has endowed that body with Statutes and Rules of Procedure. The Permanent Mandates Commission submits reports to the Council.

On the basis of these reports, the Council addresses observations, if it thinks fit, to the mandatory Power.

. . . Rectifications of frontiers are subject to the Council's approval.

. . . the Council decides when the time has come for the emancipation of a mandated territory. . . .¹²

The Council was one more illustration of the unity and interlocking of League machinery as a whole in respect of mandates. Mandatory powers were represented on the Council in addition to appearing as accredited representatives before the Council's advisory Commission. Three of the permanent members of the Council were mandatory powers; also at times one of the Council's elected members, such as a British Dominion or Belgium. Moreover, by a resolution of September 25, 1923, the Council decided (under Article 4, paragraph 5, of the Covenant) to invite all mandatory powers not represented on the Council to send delegates to participate in the Council debates when matters relating to their mandates were under consideration. Thus the mandatories had every opportunity to express their views in the Council. This did not, however, prevent the Council, as a general rule, from accepting and acting upon the advice of its Commission. The voice of the Commission could also be heard directly in the Council during the discussion of its report, since the chairman was always invited to the Council table. As in other fields of League work, there was a certain continuity from session to session in the matter of the country whose representative acted as Council rapporteur for mandates. Representatives of mandatory countries were usually not requested to act as rapporteurs.

It was the Council alone which could speak directly to governments: "When there were important communications to be made it was the duty of the Council, which assumed the responsibility, to make them, and not of the Commission, whose rôle was only an advisory one."¹³ It was the Council alone of League bodies which could act. It alone could transmit recommendations of its Commission to the governments and

¹² *The Council of the League of Nations; Composition, Competence, Procedure* (Geneva: Information Section, 1938), pp. 46-47.

¹³ M. Rappard, *P.M.C. Min. I* (1921), p. 5.

request them, as it did following the second session of the Commission, to be "good enough to carry out these recommendations."¹⁴

When, under Article 4, paragraph 5, of the Covenant, and the Council resolution of 1923 referred to above, a mandatory power, not a member of the Council, was invited to sit with the Council, it was the practice that it should enjoy the same rights as a member of the Council, that is to say, the representative in question could take part in the discussion and in the voting.¹⁵ As all the mandatory powers were at the Council table when their reports were under consideration, the view has been expressed that "acceptance of the Council's resolutions on the subject [the Mandate reports] therefore involves acceptance by all the mandatory powers, which thus become bound by the resolution."¹⁶ As mandates were regarded as a matter of substance and not of procedure, the right of veto could have been used by any member of the Council. (Absent or abstaining members did not count, e.g., Japan, 1933-35.) But in fact throughout the life of the Council decisions on mandates were unanimous.

The Mandates Commission lived while the Council lived. It was so completely dependent on the Council that when the Council ceased to exist for practical purposes in 1940, the Mandates Commission ended with it.

Despite its wide powers, the Council (and *ipso facto* its advisory organ) was always subject to the limitations inherent in the basic principle set forth in the Council by Mr. Balfour, that the League was not responsible for the political decisions which were involved in setting up the mandates system.¹⁷ The task of the Council was to supervise a system created by the governments. Its business was to get that system into working order and to exercise a certain international supervision over its running, and to ensure that it worked in accordance with the principles and stipulations of the Covenant and the mandate charters. Avoidance of responsibility for political issues was shown by the fact that the

¹⁴ L.N., *Official Journal*, 1922, p. 1263; cf. the formula of 1938, when the Council decided to communicate the observations of the thirty-fourth session of the Permanent Mandates Commission to each government "with a request to take thereon the action asked for by the Commission."

¹⁵ *The Council of the League of Nations*, op. cit., p. 57.

¹⁶ Wright, article on "Mandates" in *Encyclopædia of the Social Sciences*, Vol. X, p. 91.

¹⁷ See above, Chapter IX, section 3. The point was to be made still more explicit by the Charter, under which no question of political responsibility for the United Nations arises until it is presented with draft trusteeship agreements which it may approve or reject.

Council was always "especially anxious to make it clear that it [was] not responsible for the boundaries of mandated territories."¹⁸ In the main frontiers were delineated by the powers in the mandate texts and the Council merely took cognizance of them as accomplished fact. But the Council took decisions on frontier questions in some cases, e.g., Iraq-Turkey frontier, 1924-25; Iraq-Syria, 1932. On other occasions it formally approved agreements between powers regarding mandate frontiers, e.g., Tanganyika-Ruanda-Urundi, and Tanganyika-Mozambique.

¹⁸ Quincy Wright, *Mandates under the League of Nations*, *op. cit.*, p. 117 n.

CHAPTER XII

THE PERMANENT MANDATES COMMISSION— CONSTITUTION AND PROCEDURES

The mandates article of the Covenant, and the mandate charters based upon it, were legal texts. All the central organs named in those texts—the Mandates Commission, the Council, and the Secretary General—sat in Geneva. The mandatory power sat in the territory. What definite links were to be found in these legal texts binding the mandatory power to these central organs? Professor Rappard pointed out, at the first session of the Mandates Commission, that there was only one such definite link: "The only official link between the Mandatories and the League, in whose name they exercised their powers, was the Mandatory's annual Report." And he went on to argue that since the Mandates Commission was the mechanism whereby these reports were examined, without such a Permanent Commission "the Mandates would exist only on paper."¹ The Commission, both from a practical and a theoretical point of view, was a remarkable body. There had never existed any international organ comparable to it. It was a closely knit body of highly trained, public-spirited men and women meeting continuously year after year for forty or fifty days of the year. Furnished with a continuous flow of official data, it kept close watch over, and in a sense guided, in close collaboration with the colonial administrators and colonial offices, the affairs of fourteen diverse territories. The Commission was highly skilled in sifting, comparing, and judging the data before it. Though on paper it might seem powerless, yet it had at hand and knew how to use the powerful instrument of publicity to put into full force the principles of the sacred trust. No merely regional body could have such a wide central view as this Commission, responsible as it was for territories in three continents.

From a theoretical point of view, the Commission was of considerable interest. It had a fixity of tenure and a continuity beyond that perhaps of any other League committee. It was mentioned in the Covenant

¹ P.M.C. *Mém.* I (1921), p. 6.

itself. The only other permanent body named in the Covenant was the permanent commission created by Article 9 to advise the Council on military, naval, and air questions. One consequence flowed from the fact that the Commission was named in the Covenant: as its chairman pointed out during its tenth session, "once constituted, [it] could not be dissolved either by the mandatory Powers or by the Council."² It was to win for itself, finally, the envied position of possessing the respect, if not the love, of the governments, the support of the Council, and the strong and unvarying support of the Assembly. The qualities of mind and character that emerged in the work of this Commission were such that, perhaps more than in other fields of the League's work, mandates were conducted on a plane above the mere letter of the law—a plane on which the Commission and the governments vied with each other in *going beyond the letter to carry out the spirit and purpose of Article 22 and of the mandates*. The work accomplished over the twenty years might reasonably claim to have lived up to the words used by an eminent English jurist in another connection:

It is especially necessary to discover and to give effect to all the beneficent intentions which such instruments embody and which their general tenor indicates. It is impossible to suppose, whatever the imperfections of their phrasing, that the framers of such instruments should have intended any Power to escape from its obligations by a quibbling interpretation, by a merely pedantic adherence to particular words, or by emphasizing the absence of express words, where the sense to be implied from the purport of the Convention is reasonably plain.³

The adoption of the *Constitution* and of the *Rules of Procedure* were dealt with in Chapter X. The texts of these documents are given in Annexes VI and VII, and may be summarized here.

I. MEMBERSHIP OF THE COMMISSION—ITS NATURE AND QUALITY

The Commission consisted originally of nine members (a tenth, German, was added in 1926, and Professor Rappard was made an extraordinary member in December, 1924). A majority of the members had to be nationals of non-mandatory powers. This meant that out of ten members only four could be nationals of mandatory powers. The four

² P.M.C. Min. X (1926), p. 14.

³ Lord Sumner quoted by the Rt. Hon. H. V. Evatt in "The British Dominions as Mandatories." The Australian and New Zealand Society of International Law, *Proceedings*, Vol. I (Melbourne: Melbourne University Press in Association with Oxford University Press, 1935), p. 33.

places which were the maximum that could be occupied by nationals of mandatory powers were filled from the beginning by British, Belgian, French, and Japanese nationals, with the result that no nationals of three of the mandatory powers (Australia, New Zealand, and South Africa) ever sat on the Commission. Nationals from the following countries which were not mandatory powers had seats at various times on the Commission: Italy, Portugal, Spain, Germany, Norway, Sweden (in addition a Swiss national had a seat as an extraordinary member). All the members of the Commission were appointed by the Council and chosen for their personal qualities and competence. Members might not hold any office which made them directly dependent on their government. The International Labor Organization was given the right to appoint an expert to attend, in an advisory capacity, all meetings of the Commission at which questions relating to labor were discussed. Though neither the constitution nor the rules of procedure provided for the presence of a woman member, the First Assembly expressed the desire that one member should be a woman; and in practice one place on the Commission from the beginning was so filled, first by a Swedish woman, who was succeeded in 1928 by a Norwegian woman.

There was no rule of procedure regarding the filling of vacancies which might occur through death or resignation; but in practice the Council filled vacancies as they arose. There was no guidance in the constitution or rules of procedure regarding substitutes in a case where a member was unable to attend for illness or any other reason. The practice of the Commission was definitely opposed to substitutes. Only one exception to this occurred, namely, at the eighth session, February to March, 1926, when the French member was represented by a deputy upon the express authorization of the president of the Council. The constitution provided for the possibility of technical experts assisting the Commission in an advisory capacity. M. Catastini served in this capacity for some years after the end of his term as director of the Mandates Section.

The arrangement finally made regarding the *payment of expenses* to members of the Commission provided that a special allowance of 2,000 Swiss francs annually should be paid to them from 1926 onward if they attended meetings over thirty days or more. This exceptional provision was due to the large amount of work involved in the Commission and the fact that members were not permitted to hold any official positions under their governments.

The following table ⁴ gives the names and nationalities of the members of the Mandates Commission, their date of appointment, and the reasons for their leaving the Commission.

The table shows the remarkable continuity of the Commission, both as regards the nationality of members and the length of tenure of office. During the life of the Commission there were fourteen replacements; and in each case, with one minor exception, a member of the same nationality as that of the one who had resigned or died was appointed in his place. The one exception was the replacement of a Swedish by a Norwegian woman member. As pointed out above, this practice meant that three mandatory powers never had at any stage a national on the Commission. The rule that a member of the Commission should not hold any office which put him in a position of direct dependence on his government appears to have been carefully observed. Members on occasion took an independent line opposed to the policy adopted by their countries, but this did not mean that the members of the Commission were not frequently in close contact with their governments. On a number of occasions, as we have seen above, members of the Commission represented their governments as regular government delegates at the League Assembly. When a vacancy occurred, it was the practice of the Secretary General to consult with the government of the country of which the preceding member had been a national as to the name of possible candidates for the vacancy. The Secretary General, however, showed considerable independence in rejecting persons whom he regarded as not suitable for the position. A further illustration of the close relation of members to their governments was the fact that on several occasions members of the Commission resigned to become Cabinet ministers; thus, Mr. Ormsby-Gore resigned in 1923 to become Secretary of State for the Colonies. Nevertheless, on the whole impartiality was a marked characteristic of the Commission. Lord Lugard quoted in his papers, as an illustration of this attitude, the fact that when the new Colonial Secretary (Mr. Ormsby-Gore) came back to Geneva at the next session as the accredited representative of his country, "he was subjected to critical questions by his successor on the Commission to the general surprise and even amusement of the other members. His acceptance and that of his successor of such questioning as a natural and proper course was not without significance in regard to the judicial attitude which has characterized the Commission."⁵

⁴ Based on a rough draft left by Lord Lugard among his papers.

⁵ Lugard Manuscript.

MEMBERS OF THE PERMANENT MANDATES COMMISSION

(The names of Members serving at the last session in December, 1939, are *italicized*.)

Nationality	Name	Appointed or Took Seat	When Left and Why	Remarks
Belgian . . .	<i>M. P. Orts</i>	Feb. 1921		Vice Chairman, June, 1935; Chairman, May, 1937
British. . .	Rt. Hon. W. Ormsby-Gore	Feb. 1921	Resigned, July, 1923	Joined British Cabinet
	Sir F. Lugard (Lord)	July, 1923	" March, 1936	
	Lord Hailey	Sept. 1936	" Sept. 1939	Joined British Cabinet
Dutch.	Lord Hankey	May, 1939		
	<i>Lord Hailey</i>	Dec. 1939		
	M. Van Rees	Feb. 1921	Died, Oct. 1934	Vice-Chairman
French	<i>Baron Van Asbeck</i>	Jan. 1935		
	M. P. Beau	Feb. 1921	Died, Feb. 1926	
	M. Roume	Feb. 1926	Took M. Beau's place for Eighth Session	
Italian.	M. Merlin	June, 1926	Died, May, 1935	
	M. Manceron	May, 1935	Died, April, 1937	
	<i>M. Giraud</i>	May, 1937		
Japanese.	Marquis Theodoli	Feb. 1921	Resigned, Dec. 1937*	Chairman till May, 1937
	M. Yanagihita	Feb. 1921	Resigned, Oct. 1924	Japan ceased to be a member of the League in 1935 without relinquishing mandate.
	M. Yamanaka	Oct. 1924	" 1928	
	M. Sakenobe	June, 1928	" Nov. 3, 1938	

* Left the Commission on June 11, 1936, after protesting against the inclusion of the mandates in sanctions against Italy.

MEMBERS OF THE PERMANENT MANDATES COMMISSION—Continued

Nationality	Name	Appointed or Took Seat	When Left and Why	Remarks
German . . .	M. Kastl Dr. Ruppel	Sept. 1927 June, 1930	Resigned, June, 1930 " Oct. 1933	German notice of withdrawal from League, October, 1933. Took place of Mme. Bugge-Wicksell. Ill, died soon after.
Norwegian . . .	Mlle. V. Dommeng	June, 1928	Resigned, July, 1929	
Portuguese . . .	Gen. F. d'Andrade	Feb. 1921	Died, April, 1940	
Spanish . . .	Count de Peña Garcia	July, 1929	Resigned, Aug. 1922	
	M. Ramon Fina	Feb. 1921	June, 1924	
Swedish . . .	Count de Ballobar	Aug. 1922		
	M. Palacios	June, 1924		
Swiss . . .	Mme. Bugge-Wicksell	Feb. 1921	Died, 1928	Director, Mandates Section, 1921-24; Vice Chairman, May, 1937.
	M. W. E. Rappard	Dec. 1924		
I.L.O. REPRESENTATIVES				
	Mr. Grimsshaw	1922	Died, 1929	
	Mr. Wassier	Nov. 1929		
SECRETARY TO THE COMMISSION				
Swiss . . .	M. W. E. Rappard, Director of the Mandates Section, 1921-25			
Italian . . .	M. V. Catastini, † Chief (Director) "			
Swiss . . .	M. de Haller, Director of the Mandates Section, 1936-			

† Attended as Expert after ceasing to be Director.

It was, however, questionable whether real independence on the part of a member of the Commission was possible in a case where the government of his country became autocratic or totalitarian. The German member left at once when Germany withdrew all its nationals from League committees in 1933. The Italian chairman walked out of the Commission in June, 1936, after precipitating a debate on sanctions (which was not on the agenda of the Commission) in a speech in which he presented views coinciding with those of his government. The Japanese member remained until 1938. Though Japan had ceased to be a member of the League in 1935, it had not relinquished its mandate.⁶

The tenure of the members of the Commission, more than that of any other League body, approximated that of judges. Once appointed they remained members of the Commission until they either resigned or died in harness. The table above illustrates their length of tenure in practice. Thus M. Orts (Belgium) remained a member through the entire life of the Commission. Lord Lugard was a member for thirteen years and six months; the Italian chairman, M. Theodoli, was a member for fifteen years, during the whole of which he was chairman of the Commission.

This long *chairmanship* was unique, among the League committees, and appears to have been due, in part at least, to a tacit understanding among the powers that as Italy had received no mandate, the chairmanship of the Commission should go to an Italian.⁷ The Secretary General's report on *Committees of the League of Nations*⁸ indicated that rotation was the general rule, and that three years was more or less the limit for any chairmanship. The Mandates Commission was made an exception to this rule, the reason being, it was understood, that a change was not favored by the Italian Foreign Office.

There is general agreement that the Commission as thus constituted was successful in its work; and the members of the Commission, delegates at League Assemblies, and writers on the subject have attributed that success in large measure to the fact that the members of the Commission were independent of their governments. Independence, how-

⁶ For the debate on sanctions, see P.M.C. Min. XXIX (1936), pp. 168-71.

⁷ Orlando noted in the Supreme Council, when Mandates were allocated (May 7, 1919), that Italy was excluded. "If mandates were a burden Italy was ready to accept them. If mandates had advantages, then Italy had the right to share them." Italy, he added, had been promised compensations in Africa under the London Treaty (1915). *For. Rels. U. S., Paris Peace Conference, 1919*, Vol. V, p. 507.

⁸ *Report by the Secretary-General, Drawn up in pursuance of the Council's Decision on January 17th, 1934* (Geneva, 1934), L.N. Document C.287.M.125.1934.

ever, did not always go with expertness, although the membership of the Commission always included several experts of the highest quality in colonial matters. Independence was to some extent bought at the cost of the members knowing less than government expert administrators. The latter not only had full access to administrative files, but to the unique facilities for collecting and putting in order facts which governments alone possess. They also had every facility to learn the facts on the spot in the territories from which the members of the Commission were in practice excluded.

2. WORKING ARRANGEMENTS

The *arrangements for the meetings* of the Commission and the conduct of business may be summarized as follows:

Meetings were convened by the chairman through the Secretariat. The Commission met, as a rule, twice a year, in the second half of June and the end of October or the beginning of November.

The annual reports for eight of the territories were to be sent in before May 20, and the other six before September 1, in order to permit the Commission to study them at its two sessions.

At the June session, the Commission examined the annual reports for Palestine, Syria, French Cameroons and Togo, Tanganyika, South-West Africa, New Guinea, and Nauru; and at the November session, it dealt with the reports for British Togo and Cameroons, Ruanda-Urundi, the Japanese mandate, Western Samoa, and, until 1932, Iraq.

Extraordinary sessions^{*} were possible, provided a majority of the members and the president of the Council agreed. Under the constitution, the Commission had to sit at Geneva, and in practice only one session was held outside the League capital. This was an extraordinary session on Syria which met at Rome.

The provisional *agenda* for each session was prepared by the Secretariat in consultation with the chairman and adopted by the Commission. New items could be added only by a two-thirds vote of the members present.

Voting: Decisions of the Commission were by a majority of the votes of the members present, the chairman having a casting vote in case of a division of opinion. If the minority so desired, a statement of its views had to be transmitted to the Council. Six members constituted

^{*} During the life of the Commission four extraordinary sessions were held.

a quorum. As a result of difficulties caused by the resignation of German, Italian, and Japanese members, the Council in 1939 reduced the quorum to five.

The *chairman* and vice chairman were elected by secret ballot for the period of a year at the beginning of the first ordinary session each year. The practice of the Commission was to reelect each year the same chairman and vice chairman; and the only change in the chairmanship was due to the departure of the Italian chairman in 1936.

Publicity: The practice of the Commission was to hold its meetings in private except for the opening meeting of a session to which the press and the public were admitted. At this opening meeting a brief speech was made by the chairman, summarizing discussions and decisions of the Council and Assembly since the last session of the Permanent Mandates Commission. This was followed by a factual summary by the secretary of the work of the Secretariat since the last session. Matters usually covered were the comments made by the Council and the Assembly on the reports which the Commission had submitted following the previous session, reports received from mandatories, and petitions from all sources.

The *Minutes* of the meetings were kept by the Secretariat. The minutes were taken in a slightly condensed form, then circulated to each member for verification or correction of his own contribution. In practice a good deal of latitude had to be given in the making of corrections. In the case of statements of special importance by the accredited representatives, a verbatim report was taken by parliamentary shorthand reporters. Great care was exercised by the Secretariat to provide the best available minute writers and to maintain continuity from year to year. The maintenance of such continuity made for more skilled interpreting and minute writing, and was thus an important factor in the efficient conduct of business. It was highly important for such a secretarial staff to be familiar with the discussions over several years as there was a good deal of repetition, the same questions coming up again session after session, asked by the same member. A high degree of efficiency on the part of the secretariat was all the more necessary because effective control was not always exercised over the discussions by the chairman. Although the minutes were as carefully edited as those of the Council itself, they were usually printed within two months of the end of the session. Thus the minutes for the June session were out in time for circulation to the Assembly and Council in September.

There was one provision in the constitution of the Commission which proved to be impracticable. This was section (h), which provided for the holding of a plenary meeting, together with the representatives of the mandatory powers, to consider all the annual reports as a whole and any general conclusions to be drawn from them. This was not feasible because it became the practice of the Commission to estimate in advance in the agenda the number of days likely to be needed for the examination of each annual report. This made it possible to notify the representative of the mandatory as to the date on which he would be expected to attend the Commission's session. It was obviously not practicable to try to detain the representatives of the mandatory powers in Geneva until the Commission had examined one by one all the reports.

3. THE ANNUAL REPORT SYSTEM

The annual reports of the mandatory powers and their examination by the Commission were the heart of the mandates system. These reports really consisted of several elements: (1) the voluminous printed reports forwarded by the mandatory governments; (2) the supplementary statements, which were in the nature of supplements to the annual reports, made by the accredited representative, together with all his answers to questions put to him in the Commission; and (3) subsidiary reports made by the governments in reply to requests addressed to them through the Council by the Commission. It was clear from the logic of the situation that a commission charged with exercising supervision over mandatory administration but unable to move out from Geneva to visit the territories could not possibly function without such written and oral data furnished by governments. This was by far the most important source of its information, though it was able to piece together some fragments from petitions, a good deal from the texts of laws and regulations and other government-published material, bluebooks, departmental reports, and the like. It also gleaned a certain amount of data mixed with much waste matter from non-official sources.

There was nothing very novel about the idea of annual reports as such. On the national level the furnishing of annual reports by colonial territories for the information of colonial offices and parliaments was a long-established practice running well back into the nineteenth century. Even the idea of annual reports of an international character on matters affecting dependent areas had a long history behind it, extending back

as far as the Congress of Vienna in 1815. Castlereagh made there the proposal that "the ministers accredited to London and Paris by the powers . . . be authorized to discuss conjointly" measures taken relating to the slave trade and "be directed to make a joint report at the end of each year, for the information of their respective courts, upon the situation as respects trade in African negroes, based upon the most recent information obtainable, and in regard to the progress made by the nations concerned in diminishing or abolishing the trade."¹⁰ A similar plan in still greater detail was put forward by Great Britain at the Brussels African Conference in 1890.¹¹

Under the League at Geneva, annual reports were an essential feature of the work of a number of the League committees, which drew from such reports the information necessary for their activity and circulated it in the form of a "Summary of Annual Reports." They were an important element in the work of the International Labor Organization. Under Article 408 of the Treaty of Versailles, each of the members of the ILO agreed to make an annual report on the measures taken to give effect to the provisions of the conventions to which it had become a party. The form was to be as prescribed by the governing body; a summary of the reports¹² had to be placed before the annual labor conference by the Director and formed a regular item on the agenda of the International Labor Conference. Such was the case also with the Opium Advisory Committee of the League, where annual reports played from the outset a highly important part. In this case the annual report system at first had no basis in the Covenant and only a foothold in the statistical provisions of the Hague Opium Convention of 1912. The system was based on an Assembly resolution until it was given full legal recognition by the 1931 Conference for the Limitation of the Manufacture of Narcotic Drugs.

The annual reports of the mandatory powers on the territories under their charge, and the Commission in its examination of those reports, always covered a wider area than that indicated in the questionnaire drawn up by the Commission. The area covered was in fact as wide as it well could be, namely, "all fields of the administration and all aspects

¹⁰ Snow, *op. cit.*, pp. 90-91.

¹¹ *Ibid.*, p. 99.

¹² For a recent example of the annual summary, see International Labour Conference, Twenty-Seventh Session, Paris, 1945, Report VI; *Reports on the Application of Conventions (Article 22 of the Constitution)*, Sixth Item on the Agenda (Montreal: International Labour Office, 1945).

case of the Bondelzwart affair the Commission had before it a report made by the administrator of the territory addressed to the South African Government in June, 1922. It also had before it another report, again made to the South African Government by a Commission of Enquiry appointed by the latter. Both these reports were forwarded by the South African Government to the Council, but the mandatory power did not furnish the Commission with any comment on the report or any statement of its own view. The Commission reported to the Council that it had contradictory versions before it and had received no report from the mandatory power itself.¹⁶

5. THE QUESTIONNAIRE (FORM OF ANNUAL REPORT)

It was the usual practice of the League committees to prescribe the form of annual reports which governments were asked to follow. This ensured that the whole ground on which the committee desired information would be covered; that the reports would be on some kind of uniform basis; and that it would be possible to compare the answers given by different governments to particular questions and so classify the data more effectively. The practice of the Mandates Commission was to use the term "questionnaire" rather than the more satisfactory term "form of annual report."¹⁷ The texts of the various mandates in general required the mandatory to render an annual report "to the satisfaction of the Council" as to the "measures taken [during the year] to apply the provisions of the mandate." The corresponding text in the "C" mandates was somewhat wider, requiring a report "containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed" under specified articles of the mandate. The phrase "to the satisfaction of the Council" supplied the legal basis for the questionnaire—if one were needed. The questionnaire for the "B" mandates (which differed very little from that of the "C" mandates), as drawn up by the Commission at its first session, is given in Annex IX.¹⁸ The different chapters of the questionnaire covered slavery, labor, arms traffic, trade and manufacture of alcohol and drugs, liberty of conscience, military clauses, economic equality, education, pub-

¹⁶ Arnold J. Toynbee, *Survey of International Affairs, 1920-1923* (London, etc., 1925), pp. 397-417.

¹⁷ For the texts of the questionnaires for the "B" and "C" mandates, see also P.M.C. Min. 11 (1922), pp. 81-84.

¹⁸ For the Provisional Questionnaire drawn up by the Trusteeship Council, see U.N. Document T/44, May 8, 1947.

lic health, land tenure, moral, social, and material welfare, public finances, demographic statistics. In addition, the mandatories were asked to be good enough "to add to the annual reports the text of all the legislative and administrative decisions taken with regard to each mandated territory in the course of the past year."

After several years' experience with this questionnaire, the Commission decided that a more detailed list of questions was necessary. It was no doubt induced to take this view partly because of the very fact that the governments in practice had already given far more in their reports than they had been asked in the questionnaire. M. Hymans, in his report of August 5, 1920, had said: "The Annual Report . . . should certainly include a statement as to the whole moral and material situation of the peoples under the Mandate. It is clear, therefore, that the Council also should examine the question of the whole administration." The Commission noted at its very first meeting that the reports given voluntarily by the mandatory powers "had explained the whole of their administration," and not merely the particular points mentioned in Article 22 and the mandate texts.¹⁹ From this the Commission had drawn the conclusion that the governments favored the "wider interpretation" of the powers and scope of the Commission given by M. Hymans in his report of August 5, 1920, and continued in this view despite some warning signals in the Council. The Commission therefore drew up in 1926 a new document which expanded the 60 questions contained in the first questionnaire to nearly 300. This move met with considerable opposition in the League Council, and when the Council referred the matter to the mandatories, they gave it still shorter shrift. As the Council would not accept the new questionnaire, the Commission had to be content with pointing out that it had been intended to assist the mandatories, and that the latter were at liberty to use it if they so desired.²⁰

It must be remembered that this matter of the mandates questionnaire was part of a wider issue. Governments at Geneva were never fond of long League questionnaires in any field. The feeling existed that committees and the Secretariat tended to ask too many questions, the answers to which could only be found at the cost of a considerable administrative effort; and that in the end the effort might very well prove to be wasted, since no particular use could be made of the replies when they were finally assembled in Geneva.

¹⁹ P.M.C. *Min.* I (1921), p. 12. (See Chapter X, for references to the Hymans Report.)

²⁰ See below, Chapter XIII, section 4.

In practice the Commission secured by the good-will and interest of the governments the wide scope and variety of information which governments had been reluctant to empower the Commission to request as of right in the form of an exhaustive questionnaire. Governments were willing enough to answer requests for information on individual points even if they happened to be among those included in the rejected questionnaire.

6. THE QUESTIONING OF THE ACCREDITED REPRESENTATIVES

Like the Council, the Mandates Commission was a committee of "rapporteurs." Members were not formally designated as rapporteurs except for petitions. But the subjects covered by the annual reports each year were so numerous that in the interest of efficiency the Commission decided at its second session to distribute among its members the subjects covered by the annual reports. Each member undertook to study the subject assigned to him (e.g., economic questions), to open the discussion on this particular aspect of the report, and to put questions in this special field to the accredited representative. It was open to other members of the Commission to put questions in this field; but the usual practice was for the rapporteur to open the discussion and to question the accredited representative. When the members received the annual report, each rapporteur studied it from his particular angle, usually with the help of a memorandum prepared by the Secretariat, which contained a series of questions which the Secretariat thought might be put at the meeting to the accredited representative. This system of specialization did not come into full working operation until the tenth session of the Commission, but from that point on it became an important feature of its internal organization. Rapporteurs were changed from time to time, particularly when, through death or resignation, there was a change in the membership of the Commission. The effectiveness of the rapporteur system of organizing the business of the Commission was in large measure dependent upon the continuity of membership, since the work of the rapporteur was much more effective if he had a memory and experience stretching back over a number of years.

There was a large element of repetition involved in the questions put to the accredited representatives, the same questions coming up year after year, brought up by the same rapporteur. This element of continuity increased the mechanical efficiency of the Commission and assisted

the Secretariat (including the interpreters and the minute writers) in their work.

Putting questions to ministers, which developed a little over a century ago as a casual procedure in the House of Commons, developed into one of the most important and valuable instruments of parliamentary government.²¹ There is no doubt that questioning by members of the Mandates Commission of the accredited representatives of the mandatory governments was one of the most valuable, if not the most valuable, of all the procedures of the Mandates Commission.

The annual report and the accredited representative belonged together; one supplemented the other. The institution of the accredited representative, for which no provision had been made expressly, either in the Covenant or in the mandate texts, proved to be a very important and effective part of the mandates system. As noted above, full provision for it was made in the constitution and rules of procedure of the Mandates Commission, this expedient having emerged when the original idea of having governments directly represented on the Commission was dropped in favor of independent members not responsible to governments. The representatives of the governments were then brought back individually to the Commission as accredited representatives. Attendance by an accredited representative was not obligatory, but in practice the governments, even if they had wished, could not afford to be absent. There appear to have been only two occasions on which representatives failed to appear, namely, at the second session (South Africa), and at the thirty-fifth (Japan).

The Commission was quick to realize that its work would gain greatly in efficiency if it could secure as accredited representatives the actual administrator of the territory directly responsible on the spot for its administration. It pointed this out in its report to the Council on the work of the fourth session.²² The Council in turn expressed the hope that the mandatories in future would find it possible "to send the officials personally responsible for the administration of mandated territories as representatives to the Mandates Commission."²³ "This suggestion," Lord

²¹ "In 1835 the first printed questions appeared on the notice paper," of the House of Commons. Redlich, *op. cit.*, Vol. I, p. 117.

²² Permanent Mandates Commission, *Report on the Work of the Fourth Session of the Commission submitted to the Council of the League of Nations* (Geneva, 1924), L.N. Document A.15.1924.VI, pp. 1-2.

²³ *Minutes of the Thirtieth Session of the Council held at Geneva from Friday, August 29th, to Friday, October 3rd, 1924; Official Journal, 1924, p. 1287.* For an account of the debate in the Sixth Committee of the Assembly in 1929, see Chapter XI, above, section 2.

Lugard notes, "was increasingly adopted by mandatories, who frequently sent also an official from the Ministry of the Colonies, who could explain the higher implications of policy. The value of the Commission's work thus largely depended on the assistance which the mandatory was able to give in this work." ²⁴

Though the Commission and the governments cooperated closely and with mutual respect, it did not follow that the relationship was always a comfortable one. The minutes of sessions of the Commission had many examples of the insistent and searching questioning to which the government representatives had to submit. The following example has been chosen from the last session of the Commission after the war broke out, December, 1939, when the Commission examined the annual report for Ruanda-Urundi.²⁵ M. Giraud and Baron Van Asbeck questioned the accredited representative about an alleged monopoly for the purchase of cotton from the natives held by a company, the Ruzizi Company. The accredited representative was reminded that at the thirtieth session (November, 1936), he had said the company had "virtually a *de facto* monopoly." The accredited representative replied that strictly speaking there was no monopoly, since the natives could sell cotton outside the buying zone of the company. The chairman pointed out that "the question had been raised more than once," and asked that the next report give "a perfectly clear explanation of the system of cotton zones," and why they were adopted. Baron Van Asbeck added a request for a text of the company's agreement in order to enable the Commission to judge whether it was "consistent with the provisions of the mandate."

The accredited representative replied that this "raised a question of principle." The fact that the Commission was interested in a particular question did not "justify asking the Administration of the mandatory Power to throw open its records." This was a far-reaching precedent, and, he went on, "it might be the beginning of a practice which would lead the Commission to ask on any specific point for the production of documents, nay, even Minutes and correspondence between two administrative departments." The chairman quoted Article 11 of the mandate, to the effect that the report should contain full information concerning the measures taken to apply the provisions of the mandate. If the mandatory power decided that on principle it was not able to furnish the

²⁴ Lugard Manuscript.

²⁵ P.M.C. *Mins.* XXXVII (1939), p. 57; *ibid.*, p. 133, for the passage in the report to the Council.

Commission with the actual clauses of the agreement made with the company, this fact would be mentioned in the report to the Council. In its report to the Council the Commission duly recorded the following passage: "The Commission would be glad to be in a position to judge, in the light of the provisions of the mandate, whether the practical effect of the concession granted to the Ruzizi Company is to eliminate competition in the purchase of cotton, in a particular area of the territory." The matter was left hanging in the air as the Commission never met again.

7. OBSERVATIONS BY THE COMMISSION; REPORTS TO THE COUNCIL

As the Commission's minutes accompanied its report to the Council, together with voluminous annexes, the report itself tended to be increasingly short and, even to some extent, perfunctory. It afforded a clue to only a very small part of the vast field covered by the Commission in its minutes. The report was usually divided into two parts. Part I consisted of three sections: (a) "Special Questions"; (b) "Observations on the Administration of Certain Territories under Mandate" (separate observations being made for each territory for which an annual report had been considered by the Commission); and (c) "Petitions," giving the observations of the Commission on the petitions received by it. There was sometimes a heading for "General Questions." Part II of the report was devoted to "Comments of the Accredited Representatives Submitted in Accordance with Section (e) of the Constitution of the Permanent Mandates Commission."²⁸

Requests for information were the most common form of observation made by the Commission. Direct criticisms were far less common and were made only after considerable discussion and reflection on the part of the Commission. Suggestions were made from time to time regarding the possibility of adopting new measures or making changes in the administration of the territory. Mandatories frequently responded by adopting the suggestions made by the Commission. It may be pointed out that an observation made by the Commission in its report carried with it the responsibility of the body as a whole, i.e., it was unanimous. The expression of individual opinions and observations was possible, but the Commission had no collective responsibility for them. "The collec-

²⁸ This section contained any written comments made by the accredited representative on receipt by him of the observations made by the Commission upon the report of the territory for which he was responsible.

tive opinion of the Commission," Lord Lugard noted, "can only be submitted to the Council after full debate and unanimous agreement on the terms used." Thus, neither the chairman nor a member could be regarded as a representative of the Commission. When the chairman, M. Theodoli, informed the Commission that he had received an invitation from the Government of South Africa to visit the Union, and went on to suggest that he should represent the Commission, the proposal was rejected. He was requested to make it clear, in any conversations he might have on political or administrative subjects, that he expressed only his personal opinions and not those of the Commission. "If," Lord Lugard pointed out, "the Commission in its corporate capacity criticized policy, and offered advice as to what should be done, it accepted responsibility if that advice proved to be wrong—a responsibility which clearly could not be accepted by a body remote from the territory and only partly informed of total conditions. In the absence of a definite pronouncement by the Commission in its report to the Council, the questions put by individual members—for which the Commission disclaims collective responsibility—would sufficiently indicate to the accredited representative where those members thought the policy of the Mandatory might be at variance with the Mandate."²⁷

²⁷ Lugard Manuscript. For examples of the observations of the Commission, see League of Nations, *The Mandates System*, *op. cit.*, pp. 48, 54-56.

CHAPTER XIII

THE MANDATES COMMISSION—SCOPE AND POWERS

I. THE COMMISSION AND THE TERRITORIES

There were certain differences in the way in which the mandates system worked for the several types of territory. The relations between the Commission and the governments with respect to the "A" mandates were affected by the fact that here the position of the governments was rather less open to attack or misunderstanding. They were committed, more or less, to independence of the territory in advance. Thus, some of the issues which caused difficulties with the Commission in relation to "B" and "C" mandates did not exist. The accredited representatives who appeared before the Mandates Commission for the "A" mandates were chosen at the highest level. While the members of the Commission would probably not have regarded themselves as particularly expert in matters relating to the "A" mandates, most of them were at home in relation to the African mandates, particularly those in the "B" class. This was the part of the colonial world with which a number of the members of the Commission were most familiar. They therefore had sympathy and understanding for the tasks which confronted the governments—but they also had their own ideas as to what was needed. Here, too, the mandatory powers were represented by accredited representatives who were chiefly the officials responsible for the administration of the territories.

There was, perhaps, more tension between the Commission and the governments in relation to the "C" mandates than in the case of the other two classes. Here the accredited representatives tended to be drawn more freely from London, or from permanent representatives accredited to the League in Geneva, than from the territories themselves, all of which were much more distant from Geneva than the "A" or "B" mandates. Moreover, the members of the Commission knew far less about the territories comprising the "C" mandates. They had little or no first-hand knowledge of any of the territories concerned, where conditions were quite different from those with which they were familiar in

tropical Africa. The lowest point in the working of the Mandates Commission was perhaps to be found in its examination in different years of the reports on the "C" mandates. An example might be taken from its examination of the report on Western Samoa at the thirty-seventh and last session in December, 1939.¹ The questions asked were for the most part on unimportant points and betrayed a lack of familiarity with conditions in the Pacific islands. The impression left on the reader of the minutes is that far too much time was being devoted to the trivialities of life on these small and remote islands and that everybody concerned was more or less wasting time.

2. PETITIONS

(a) *The Natural Right of Petition*

So far as the mandates system was concerned, petitions were of rather less practical importance than might have been expected. On the theoretical side petitions were one of the main and most interesting innovations of the mandates system. It was a mark of the elasticity of the League procedure that although the petitions system had no place either in the Covenant or in the texts of the mandates, it was set up by the League without any difficulties of a constitutional character. The initiative came, in fact, from one of the principal mandatory powers—Great Britain. In practice, however, the peoples of two of the three classes of mandates, those in Africa and in the Pacific, made little use of the petitions system. No doubt most of them had never even heard of its existence. It was used by former German settlers, including missionaries. A few petitions came from native peoples in the African mandates and Samoa, and some from Indians in Tanganyika. In the "A" mandates, where there was a good deal of petitioning, the procedure was used mainly by the minorities of different races.

Although the right of petition was not based upon any legal provision, it was in a sense a natural right. As Norman Bentwich has pointed out, "the inhabitants . . . at once assumed that such a right existed."² Under English law, the right to petition the Crown had existed since the Middle Ages. This right to petition the Crown as the fountainhead of justice extended automatically to all British subjects in British dependencies and colonies. It had come to be regarded as one of the imme-

¹ P.M.C. Min. XXXVII (1939), pp. 11-22.

² *Op. cit.*, p. 114.

morial and vital safeguards of individual rights and liberties. In the mandate system it served a double purpose: for the inhabitants of the territories it was a means of redress of grievances; for the Mandates Commission it was an additional important source of information and also of power. Petitions in fact formed an appreciable part of the Commission's work.

(b) *History*

As mentioned above, the Imperial War Cabinet, when it came to discuss the mandates system, took for granted that petitions would form a part of it.³ General Smuts, in his study of the League published in December, 1918, proposed that the population of a mandated territory should be able to "appeal for redress to the League."⁴ A petition clause was proposed by Lloyd George at the Peace Conference in the meeting of the Council of Ten on January 24.⁵ President Wilson added a like clause to his fourth draft of the Covenant issued on February 2, but this was drawn up after agreement had been reached on the main lines of the mandate article, and in the end no provision actually covering petitions was inserted. Nor was the omission rectified in the draft texts of the mandates as drawn up by the Principal Allied and Associated Powers. The Council took no initiative in the matter. The Assembly of the League at its second session was the first League body to suggest the possibility of petitions from mandated areas. At the close of the Assembly, early in October, 1921, the Permanent Mandates Commission held its first meeting. Petitions had already begun to arrive, and the Secretary of the Commission, M. Rappard, asked what should be done about them. The majority of the members of the Commission rejected the suggestion made by Mr. Ormsby-Gore that a clause covering petitions should be inserted in the draft questionnaire.

(c) *Rules of Procedure*

On July 24, 1922, the British Government finally submitted to the League Council a memorandum entitled "Submission to the League of Nations of Petitions from Inhabitants of Mandated Territories; Memorandum by the British Representative of Procedure to be Adopted."⁶

³ November, 1918, Lloyd George, *op. cit.*, Vol. I, p. 118.

⁴ Smuts, *op. cit.*, p. 21.

⁵ *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. III, p. 719.

⁶ Document C.485.1922.VI., C.F.M. XII, August 1, 1922.

The memorandum was considered by the Council on September 2, and submitted by it for examination by the Mandates Commission.⁷ The latter had been unwilling to discuss the memorandum at its second session some weeks earlier on the ground that it had not yet been seized of the matter by the Council.⁸ Nevertheless, even at that session it had had before it a number of petitions and had been forced to give some guidance to the Secretariat as to how they should be answered.⁹ The Commission adopted the unusual procedure of securing a decision on the procedure regarding petitions proposed in the British memorandum by means of correspondence among the members. Slight amendments were made in the memorandum, which were "inspired, in particular, by the recommendation of the Assembly and the procedure followed as regards minorities and the Saar."¹⁰ The Rules of Procedure in respect of Petitions concerning Inhabitants of Mandated Territories, as adopted by the Council on January 31, 1923, are given below in Annex VIII. The Assembly resolution which is referred to above had been careful to protect the interests of the mandatory powers. The Assembly desired that the right of petition be defined in such a way as to ensure that—

(a) All petitions emanating from inhabitants of mandated areas will be sent to the Permanent Mandates Commission through the intermediary of the local administration and of the mandatory Power;

(b) No petition concerning the welfare of the inhabitants of mandated areas emanating from other sources will be considered by the Permanent Mandates Commission before the mandatory Power has had full opportunity of expressing its views.¹¹

The practice of the League in relation to petitions as developed in the next four years was codified in 1927 in a memorandum prepared by the Secretariat and approved with few changes by the Commission. This document is also reproduced below as Annex VIII, Document II.

Its main points may be summarized as follows: The word "petition" was taken in the widest sense. Petitions fell into two categories according to their source: (a) Petitions from the territory were to come to the Secretariat through the mandatory governments, and a petition coming in any other way had to be returned to the signatories for resubmission

⁷ L.N. Document C.614.M.368.1922.VI.; *Official Journal*, 1922, p. 1245.

⁸ P.M.C. Min. II (1922), pp. 15, 36.

⁹ *Ibid.*, p. 76.

¹⁰ P.M.C. Min. III (1923), p. 9.

¹¹ League of Nations, *Records of the Third Assembly, Plenary Meetings* (1922), Vol. I, p. 166.

through the mandatory government. (b) Petitions from sources outside the territory were submitted to the chairman of the Commission, who took a decision on the receivability of the petition, rejecting petitions which were obviously trivial. Petitions against the Covenant or the mandates were regarded as unreceivable, as were anonymous petitions, and usually those containing violent or objectionable statements. Moreover, any petition, no matter what its source, was regarded as non-receivable if it attempted to use the Commission as a court of appeal in the case of a dispute which local courts were competent to handle or had already judged. But the Commission reserved the right to consider appeals in a case where a judgment had been based on legislation which itself might not be in conformity with the principles of the mandates.

The Commission expected to receive observations from the mandatory powers on petitions coming before it. They were asked to make such comments as they might think desirable both in respect of petitions received from the territory and those emanating from other sources. In the latter case, the mandatory powers were asked to furnish any such comments within a maximum period of six months from the receipt by them of the petitions.

The practice adopted in replying to petitioners varied, according to whether the petitions were received from the territories through the mandatory powers, or whether they came from sources outside the territories. In the former case, the Secretariat did not communicate with the signatories until the conclusions of the Commission had been submitted to the Council. If the Council approved these conclusions, it usually adopted a resolution to that effect, instructing the Secretary General to bring them in each case to the notice of the petitioner as well as to the mandatory power of the territory concerned. In transmitting the conclusions to the petitioners (together with the minutes of the meeting of the Commission at which the petition was examined), the Secretary General supplied the mandatory power with a copy of his letter. The Commission rejected a proposal that such letters should be forwarded in every case through the mandatory power on the ground that this might indicate it was too much under the thumb of the latter; it reserved the right, however, to forward the reply through the mandatory power in any case where this seemed desirable.

In the case of petitions from sources outside the territory, the Secretariat acknowledged their receipt. Where the petition was rejected outright by the chairman, the petitioners were informed to that effect; in

other cases no communication was sent to them until the conclusions of the Commission had been approved by the Council.

As regards its internal procedure for dealing with petitions, the Commission adopted its usual expedient of having them dealt with by a member of the Commission acting as rapporteur. The actual discussion of the petition usually took place in the presence of the accredited representative. The report on it was discussed in the Commission in private session, i.e., without the accredited representative being present. The observations of the Commission on petitions were contained in the third part of the report to the Council. Its usual practice was to sum up the petition briefly, indicating merely its general scope, and then make its observations and recommendations. In practice few petitions got through to the Council; most fell by the wayside, either because they were regarded as not receivable or as too trivial. Their bulk precluded publication of more than a few of them in the minutes of the Commission's meetings.¹² The petitions annexed to the minutes of the Commission's seventh session filled up thirty folio pages. When petitions were published, the observations of the mandatory power accompanied them, together with the rapporteur's report on the petition.

(d) *Oral Hearings of Petitioners*

There was no provision in the rules of procedure on petitions for the hearing of petitioners in person by the Mandates Commission; and in practice the hearing of petitioners was rejected by the Commission, the League Council, and the mandatory powers. The question was first raised at the third session of the Mandates Commission and was discussed again at the eighth and ninth sessions.¹³ At its third session, the Mandates Commission decided against an oral petition to be presented by the Anti-Slavery Society in connection with the Bondelzwart incident of 1922. This precedent was cited by the Commission as a ground for refusing to see delegates from Syria at its eighth session held at Rome, which dealt with the situation in that mandated territory. The whole question of hearing petitioners had been discussed at some length

¹² P.M.C. *Mins.* VII (1925), p. 137.

¹³ P.M.C. *Mins.* III (1923), pp. 62, 64-67; *ibid.*, VIII (1926), pp. 156-60; *ibid.*, IX (1926), pp. 47-50, 52-56, 129-30, and 189-93. Though the petition clause of the United Nations Charter does not expressly provide for official hearing of petitioners, the Trusteeship Council under its rules of procedure may at its discretion accept petitions delivered orally by petitioners in the presence of a representative of the administering authority. See below, Annex XV.

at the preceding session. The chairman on that occasion informed the Commission that "representatives of various groups of the territories under mandate had formed a habit not only of communicating with Geneva in writing or verbally but of coming to see him personally at Rome."¹⁴ In reply to this observation, the Commission reached an understanding as to the correct procedure, which was formulated by M. Rappard: "All the members of the Commission were entitled to hear persons who applied to them for an interview. . . ." But this could only be done informally, and not officially. Neither the chairman nor any of the members could make any official use of anything which was said to him unless it was formally submitted in writing: "The Commission, moreover, would never be able to act upon any fact unless it was communicated to the mandatory Powers."¹⁵ The Commission decided in the negative on the further question whether the Commission itself should receive individual petitioners. The Secretariat was asked to reply that "the Mandates Commission did not think it its duty to receive petitioners; but it was understood that the Chairman would always be happy to hear what they had to say."¹⁶

At its ninth session,¹⁷ the Commission examined the question again and in its report to the Council stated that experience had shown that in certain cases where the Commission was unable to form a definite opinion as to the validity of petitions, "it might appear indispensable to allow the petitioners to be heard by it." It refrained, however, from formulating any definite recommendation and asked for the views of the Council. On the matter being put by the Council before the mandatory powers, the latter opposed the hearing of petitioners by the Commission:

They pointed out that, with such a procedure—which would involve the hearing at the same time of a representative of the mandatory Power—the parties would, in fact, be engaged in a controversy before the Commission and that any procedure which would seem to transform the Commission into a court of law would be inconsistent with the very nature of the mandatory system.

They added a further point, that the hearing of petitioners would tend to weaken the authority of the mandatory powers. These views were accepted by the Council, although, as the rapporteur observed, it was al-

¹⁴ P.M.C. *Min.* VII (1925), p. 33.

¹⁵ *Ibid.*, p. 34.

¹⁶ *Ibid.*, p. 35.

¹⁷ P.M.C. *Min.* IX (1926), p. 216.

ways possible for the Council to take a different view in an exceptional case.¹⁸

It may be pointed out that, in providing under the rules of procedure of the Trusteeship Council for the oral hearing of petitioners, the United Nations took into account the points which had been emphasized by the Mandates Commission, namely, that petitioners should not appear before the international supervisory body without the administering authority being given the opportunity to put forward its views in relationship to the petition. Moreover, it has to be remembered that the Trusteeship Council, unlike the Mandates Commission, is composed of representatives of governments of the trust powers, as well as of non-administering powers.

3. VISITS OF INSPECTION TO THE TERRITORIES

Neither the Covenant nor the texts of the mandates ruled out the possibility of investigations being made on the spot by the Mandates Commission. But although this question was discussed on a number of occasions, with the case against such visits on the whole more strongly argued than the case for them, the question of principle can hardly be said to have been settled under the League. On two occasions, at the seventh session in October, 1925,¹⁹ and again in October, 1932, the Commission hinted to the Council that it could hardly be expected to make adequate recommendations on the sole basis of written documentation without being able to examine the matter on the spot.²⁰

On the whole, however, the weight of the opinion of the Commission, and certainly of the Council, was against visits of investigation by the Mandates Commission to the territories. The Assembly, as noted above, never made any provision in the League budget for such visits. The main arguments used in the Commission against them were the difficulties which they would place in the way of the government in carrying on the practical business of governing the territory. Thus Lord Lugard, who had been very strongly in favor of the Commission hearing petitioners in person (at the eighth and ninth sessions of the Commission), was equally strong in his opposition to the idea of the Commission making inquiries itself on the spot in any territory. Such visits he regarded as "wholly impracticable." Indeed, he declared "it

¹⁸ League of Nations, *The Mandates System*, op. cit., pp. 41-42.

¹⁹ P.M.C. Min. VII (1925), p. 219.

²⁰ League of Nations, *The Mandates System*, pp. 44-46.

was impossible for the Commission to adopt the policy of challenging the whole administration of any mandatory Power by visiting the territory in order to listen to all who criticised it. Such a course would be a signal for local trouble."²¹ (On the other hand, he went on to support the idea of representatives from groups in the mandates giving evidence before the Commission.) M. Merlin, the French member of the Commission, took a similar line at the ninth session of the Commission. If petitioners had the right to appear before the Commission, the effect, he said, would be to "deliver a fierce attack on the authority of the mandatory Power, which was already weak enough in itself owing to the institution of the mandate. . . . A long line of pilgrims would march to Geneva on the pretext of obtaining justice and would fill the Secretariat to overflowing with their intrigues during each session of the Commission."²² The League Council gave no encouragement to the Commission in the matter of visits of inspection, though it never ruled them out as inadmissible in principle.²³ The United Nations Charter provided for periodic visits to the territories.^{24a}

4. THE POWERS OF THE COMMISSION—ITS NON-POLITICAL RÔLE

From the outset the powers of the Mandates Commission were defined in the widest sense, but this was coupled with a warning that its powers must not be exercised in such a way as to "increase the difficulties of the task undertaken by the Mandatory Power." These words qualified the "wider interpretation" adopted by the Council on August 5, 1920, in accepting the view put forward by its rapporteur, M. Hymans, that the Council (and consequently its advisory organ) should not merely "content itself with ascertaining that the Mandatory Power has remained within the limits of the powers which were conferred upon it," but should "ascertain also whether the Mandatory Power has made a good use of these powers. . . ."²⁵

In its report to the First Assembly on December 6, 1920, the Council stressed this wider interpretation of the Commission's powers, but coupled it with the same warning. The Commission thus had charted for it a difficult course. Though composed of members acting in their pri-

²¹ P.M.C. *Min.* VII (1925), p. 128.

²² *Ibid.*, IX (1926), p. 49.

²³ League of Nations, *The Mandates System*, pp. 44-45.

^{24a} The General Assembly approved (November 20, 1947, U.N. Documents A/498 and T/72) a recommendation by the Trusteeship Council for budgetary provision for one visiting mission in each year.

²⁵ L.N., *Official Journal*, 1920, pp. 340, 339.

vate capacity, it was a body based upon the Covenant, deriving its powers from the Covenant. Its members, as we have seen, had a security of tenure like that of judges, and a continuity almost unique among League committees. It might have been tempted to treat the fourteen territories whose administration it had to supervise as a kind of empire; it might have sought to enlarge its powers with the idea of dominating the mandatory governments, and of substituting itself for them. Despite the conservatism and caution which usually characterized its proceedings, there were occasional signs that some of its members were tempted to try to enlarge its powers, counting, perhaps, on the invariable support which the Commission received from the Assembly, with its permanent majority of non-mandatory and non-colonial powers. Warnings given from time to time in the Council that it must not seek to enlarge its powers and play a political rôle culminated in the storm over the enlarged questionnaire when the latter came before the Council in 1926. The Council on that occasion not only had before it the new questionnaire, which increased the number of questions put to governments from 60 to nearly 300, but also the suggestion of the Commission (in its report on Syria) regarding the possibility of hearing petitioners in person. Sir Austen Chamberlain (Great Britain) objected in the Council that the questionnaire was "infinitely more detailed, infinitely more inquisitorial," than the previous one and that there was a tendency on the part of the Commission "to extend its authority to a point where the government would no longer be vested in the mandatory Power but in the Mandates Commission."²⁵ The South African representative, Mr. Smit (who again represented his country at the trusteeship discussions at San Francisco in 1945), said that "the impression had grown in the mandated territory . . . that the more it developed constitutionally the greater the assumption by the Permanent Mandates Commission of power to direct the government in the territory."²⁶ All the representatives of the mandatory powers at the Council opposed the enlarged questionnaire; and their governments, to whom the questionnaire was referred by the Council, supported them.

This episode in some ways marked a turning point in the history of the Commission. The continuity of its membership gave it ample time to store up and reflect upon its experience. The result was that it settled down to a steady line of policy well calculated to give the maximum

²⁵ Fortieth Session of the Council, *Official Journal*, 1926, p. 1233.

²⁶ *Ibid.*, p. 1235.

results. That policy was one of collaboration with the governments, combined with a firm adherence to the principles of the mandates system. The classical passage in its proceedings, in which it laid down this line of policy at its eighth session, reads as follows:

The task of the Commission is one of supervision and of co-operation. It is its duty, when carefully examining the reports of the mandatory Powers, to determine how far the principles of the Covenant and of the Mandates have been truly applied in the administration of the different territories. But at the same time it is its duty to do the utmost that lies in its power to assist the mandatory Governments in carrying out the important and difficult tasks which they are accomplishing on behalf of the League of Nations, and on which they render reports to the Council.

Supervision and co-operation are functions which, though neither incompatible nor in conflict with one another, may yet be accompanied with genuine difficulties when they have to be carried out simultaneously. If the task of the Mandates Commission were merely to supervise the administration of the mandated territories, it would be natural that, in all difficult cases, it should propose to visit these territories itself, or should recommend the holding of enquiries on the spot. If, on the other hand, the rôle of the Mandates Commission were merely to facilitate the task of the mandatory Power, it should offer it lavish encouragement and abstain from passing any critical judgments which, if conveyed to the population under mandate, might create embarrassment and render the task of the Government more difficult of execution.²⁷

It was in this spirit that the Commission exercised in its own words "this double mission of supervision and co-operation." It felt its way forward cautiously and with restraint; working, as the Covenant intended it to work, on the basis of the annual reports; trailing therefore necessarily six to eighteen months after events; keeping up a steady pressure of skillful questions; rarely criticizing, and where it criticized, not failing to commend the action of the mandatory powers where commendation seemed called for; and still more rarely making recommendations which had a bearing on the future. So carefully had the Commission succeeded in avoiding political rôles that when in 1939 it was called upon to express an opinion on the British White Paper on Palestine (which it proceeded to do), Professor Rappard drew the attention of the Commission to the significance of the request. The Commission was asked, he pointed out in substance, to give its views on a political intention, on a program of future action.²⁸

²⁷ P.M.C. *Mém.* VIII (1926), p. 200.

²⁸ P.M.C. *Mém.* XXXVI (1939), pp. 198-99.

5. THE THREE PRINCIPLES OF SUCCESS

When all these conservative and negative factors are put together—the Commission's apparently passive rôle, its action after the event, its restraint from criticism, the fact that it never held any international conference, that it had no civil service, that it made no visits of inspection to the territory, that it spent no money on the territories, that it could not dismiss any official even though it might pass judgment on his action—it might seem that such a body could hardly be claimed to have been a success.

Nothing can more easily invest the history of an institution with a sense of failure than excessive claims by over-zealous friends. Such a disservice was done to the Mandates Commission by some writers and by some of the oratory in the League Assembly. A legend which no body of reasonable and experienced men could live up to was created, namely, that the work of the Commission aimed at building up a science of colonial administration, with standards capable of universal application in dependent territories.

A commission made up of individual members, debating in the seclusion of a room at Geneva and unable to study conditions at first hand in the mandated areas, might indeed have degenerated easily into a doctrinaire body engaged in endless discussions of questions of theory. It was saved from this by the practical experience and good sense of its members, as well as by their continual contact with responsible officials from the territories themselves. Once the Commission got into its stride it revealed itself as a cautious and pragmatic body well aware of the immense variety of conditions in dependent areas and of the fact that basic objectives of the system could be obtained by many different methods in different areas, and that the one fatal mistake was to try to fit all the territories into one mold. One of its members, Lord Hailey, in his *African Survey* written just before the war, drew attention to the very wide divergence of methods used in native administrations throughout Africa in such matters as education or the treatment of land rights. Despite this divergence, he pointed out, each of these methods served equally well the principle of the Covenant that "the well-being and development of such peoples form a sacred trust of civilisation." The Mandates Commission, he observed, just because it is "a body where many different administrative traditions are represented," could not be expected to produce "unanimous acceptance of definite standards . . . it is unlikely, therefore, that the mandatory system will result in the de

velopment of uniform methods of administration or in the acceptance by the mandatories of a philosophy of rule in their mandated areas which differs greatly from that prevailing in their own colonies.”²⁹ The Mandates Commission, he went on, was “on its strongest ground in dealing with legal questions” involving the terms of the mandates. Yet, looking back through the record of nearly twenty years’ service, set out in the 8,000 or more folio pages of minutes of the Commission, it must be agreed that its success was remarkable. Under its guidance and that of the League Council, the mandates system until disrupted by the war achieved its main objectives, and on the whole without crises, deadlocks, or very serious international friction. Governments never met in head-on collisions in the Mandates Commission. The Commission was never used by governments as a platform for attacking each other or as a forum for ideological disputes. The governments came into the Commission one by one as collaborators with a public-spirited group of experts, who, from the outset had adopted the rule of “absolute independence and impartiality”; and who, in their very first session, had pledged themselves before the Council to exercise their authority, “less as judges from whom critical pronouncements are expected, than as collaborators who are resolved to devote their experience and their energies to a joint endeavour.”³⁰

Lord Lugard, in a note written just before his death, referred to “the very gratifying appreciation of its work year by year from the Council and the Assembly of the League.” The success of the Commission, in his opinion, was due to its observance of three principles:

1. Abstention from direct advice or criticism of administration and policy, either in audience to the accredited representative of the mandatory, or by any attempt at local inspection.

2. That while each member is free to hold his personal view on different colonial problems and to express it in the form of a memo or by the nature of the questions he puts to the accredited representative, the Commission in no way is committed to his view. Its collective opinion can only be recorded after full discussion in a statement to the Council by a majority; if any member dissented, he could, of course, report his opinion.

3. Recognition of the duty of members of the Commission to maintain an attitude of political impartiality devoid of any national bias, and that the accredited representative is the only authorized exponent of the policy of the Mandatory in reply to criticism.

²⁹ Hailey, *op. cit.*, p. 220.

³⁰ Report to the Council on October 10, 1921, by the chairman of the Commission, L.N., *Official Journal*, 1921, p. 1125.

These, Lord Lugard wrote in the margin, were the "Basic Principles of the Permanent Mandates Commission."³¹

6. DEPENDENCE OF MANDATES AND TRUSTEESHIP ON FREE DISCUSSION AND PUBLICITY

If these were the conditions of success—and there is little doubt that the members of the Commission would agree with this verdict of their eminent colleague—what were the reasons for the outstanding failure of the Commission, namely, Japan? Japan gave notice of leaving the League on March 27, 1933. When the notice expired two years later, in 1935, she continued to hold the mandate and to send annual reports to the League, while the Japanese member remained on the Commission until he was finally withdrawn in November, 1938. Japan continued up to 1938 to send an accredited representative to the Mandates Commission for the examination of the Japanese annual reports. The suspicions of the Commission that Japan was fortifying the islands against the terms of the mandate were shown in its rather sharp cross-examination of the accredited representative on November 11, 1932.³² It received only denials from the Japanese representative on this and on subsequent occasions when it returned to the charge. It is obviously not enough to explain, as some writers have done, the inability of the Commission to bring Japan to book for this breach of the Covenant as due to its lack of powers of inspection on the spot. The reasons went deeper. They have to be sought in part in the nature of the Japanese Government and in part in the general failure of the League on the political side. The Commission was merely advisory to the Council. Yet the Council did not choose to act upon the hints which it gave, and this was the fault of the Council rather than of the Commission. There was not much point in the League taking up the lesser point of breach of the mandate provisions when it was acquiescing in Japan's conquest of Manchuria. It would have been too obviously playing out the eighteenth-century doggerel—

The law locks up both man and woman
Who steals the goose from off the common,
But lets the greater felon loose
Who steals the common from the goose.

Nor was the failure merely that of the League. It was the failure also of the United States. The latter as early as 1936 had requested the

³¹ Lugard Manuscript.

³² P. M. C. *Mins* XXII (1932), pp. 114-15.

agreement of the Japanese Government to the sending of an American destroyer on visits to a number of ports in the islands. The fact of the request and of its refusal by Japan was never communicated to the League. Mr. Huntington Gilchrist has commented that, "during the whole period between the wars the United States gave no evidence of interest in the developments taking place in the islands and did not seek to exercise any influence over them through the League of Nations."⁸⁸

A further reason for the failure of the Commission was the nature of the Japanese Government. The mandates system was based on an assumption which was fundamental to its success as well as to the success of the League system as a whole. This was the assumption that there existed in the mandatory powers several at least of the fundamental processes of democracy—namely, an active and free parliamentary opposition able to question freely the government of the day, a free press whose reporters would be able to visit and report upon conditions in the territories, free access to the territories by visitors from abroad, and the writing of free books and papers by free students able to investigate the facts and to express freely their opinions.⁸⁹ None of these factors existed in the case of Japan. One other assumption of the mandates system was false in this case, namely, that governments could be counted on to speak the truth, or that at least what they said was true, even if not necessarily the whole truth. It was the business of the Commission to round out the truth as best it could by following up all clues given to it in reports and answers.

Because of this situation, the Commission was not able to make effective use of the one important weapon at its disposal, namely, publicity. The Commission sought publicity without sensation and without the sacrifice of the privacy necessary for its meetings. Despite some pressure from the Council and the Assembly, it maintained its rule of holding in private virtually all its meetings except the opening meeting of each session. It secured publicity through the publication of its minutes and its reports to the Council, as well as the replies of the mandatory powers in the *Official Journal* of the League. The reasons it gave for insisting on the rule of private meetings was that it was an advisory council and must therefore avoid embarrassment to the Council, as well as to the mandatory powers, by premature discussion of what transpired at its meetings. As it put the matter in its report on the fifteenth session,⁹⁰

⁸⁸ "The Japanese Islands: Annexation or Trusteeship?" *Foreign Affairs*, Vol. XXII (1943-44), p. 640. For the request regarding the destroyer, see *Far. Rel. U. S.: Japan: 1937-1941*, Vol. I, pp. 307-9.

⁸⁹ See above, Chapter IX, section 5.

⁹⁰ *P.M.C. Min.* XV (1929), p. 15.

its minutes were published in order "to secure the assistance of public opinion in the moral control incumbent upon the Commission." It was the practice of the mandatory powers to communicate the minutes of the Commission to their officials in the mandated territories. A British White Paper in 1929 drew attention to the importance of publicity as a factor in the mandates system. The standards of administration imposed by the Covenant and mandates were no higher, it declared, than those which His Majesty's Government had imposed on itself. "The new factor introduced by the mandates system is that the administration of backward areas . . . is to a greater extent than previously brought under public scrutiny."³⁶ Thus the British Government, in response to a suggestion from the Commission and Council, asked the Secretary General to supply for the use of His Majesty's Government and for distribution to officers in mandated territories, fifty copies of all reports and minutes of proceedings, as well as the Commission's reports to the Council and resolutions of the Council.³⁷ Other mandatory powers also made similar requests. Subsequent annual reports indicated that the minutes were in fact being seen by the officials in the territories.

"Publicity breeds publicity," comments a journalist who studied the African mandates just before the war. "Starting at the top, it spreads a shiver of self-examination through the administrative system."³⁸ As Lord Hailey pointed out, "only those who have had experience in the internal working of an official administration, in circumstances where there is no organization of public opinion, can appreciate the strength of the influence which can be exerted by publicity of the nature of that involved in the proceedings of the Commission and Council."³⁹ Yet it may be noted that no publicity during the life of the Commission approached in intensity that given by a free press and national parliaments to the scandals of the Congo or the Amazon before the first World War, or even the Denshawai incident in Egypt.⁴⁰ In an autocratic system, where free publicity is not possible, no mandate or trusteeship system could operate.

³⁶ Great Britain, *Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa; Presented by the Secretary of State for the Colonies to Parliament by Command of His Majesty, January, 1929*, Cmd. 3234 (London, 1929), pp. 34-35.

³⁷ Letter of Foreign Office, L.N. Document C.20.1926.VI.; C.P.M. 356, *Official Journal*, 1926, pp. 374-75.

³⁸ Steer, *op. cit.*, p. 30.

³⁹ Hailey, *African Survey*, *op. cit.*, p. 219.

⁴⁰ Cf. Leonard S. Woolf, *Barbarians; Within and Without* (New York: Harcourt, Brace and Company [1939]).

CHAPTER XIV

THE LEAGUE, AFRICA, AND THE MANDATES

I. TERRITORIAL TRUSTEESHIP, AFRICAN REGIONALISM, AND LEAGUE UNIVERSALITY

As we have seen in Part I, comparisons of mandate with non-mandate administration of dependencies are most difficult to make and of questionable value. The same kind of tangled issues are involved in any attempt to judge the significance of the mandate system for Africa as a whole. The real impact of the mandate system on the seven mandated territories themselves is difficult enough to assess; but when we try to proceed beyond this to a judgment of the influence of the system on the rest of dependent Africa we enter into still more debatable ground. For one thing, there were potent influences at work in the mandated territories themselves that came from sources quite outside the mandate system. These other influences were partly national in origin and partly international. The latter form the main subject of this chapter. But we cannot pass by without mentioning the highly important national, or rather "colonial," influences on the welfare and wealth of the peoples in the mandated territories. These influences came from the fact that the mandates were in no sense isolated territories but shared the advantages of services and expenditures provided by the mandatories—Britain, Belgium, France, and South Africa—for their own colonies.

Thus, in the case of Britain, the mandates had the advantage of the Colonial Secretary's specialized corps of expert advisers "on agriculture, colonial accounts, economics and finance, education, health and medicine, labour problems and law."¹ Among the specialized bodies dealing with particular aspects were the Colonial Advisory Council of Agriculture and Animal Health; the Colonial Development Advisory Committee; the Colonial Advisory Medical Committee; committees of the Economic Advisory Council dealing with such matters as nutrition in the colonies, tsetse fly, locust control; the committees of the Imperial

¹ Halley, *African Survey*, *op. cit.*, p. 161.

Forestry Institute; the Imperial College of Tropical Agriculture, and a number of others.²

The Mandates Commission at its last session noted with appreciation references made in the annual report for Tanganyika for 1938, to the sharing by the territory in a whole series of financial grants made from the Colonial Development Fund, established in 1929 to assist colonies and mandates in the development of agriculture and industry.³

Among the free grants shown in the report as approved were :

	£ Sterling
Geodetic Triangulation Survey	1,500
Tsetse Research	207,974
Sleeping Sickness Research	11,726
Topohydrographic Survey and Irrigation Experiments	33,300
Survey of Water Resources and Problems	} 7,130 23,070
Forestry Development	
	34,500 ⁴

Grants on a far greater scale were made possible by the Colonial Welfare and Development Act of 1940, passed by the British Parliament as the German army swept towards the Channel in May of that year. Appropriations under the act provided for the expenditure in colonies and mandated territories of £5,000,000 annually for ten years. A new act of 1946 provided for an expenditure of £120,000,000 over ten years, a proportionate part of which will go to the mandates. No one who watched at Geneva the Fourth (Budgetary) Committee of the Assembly at work year after year could have conceived of it being happy about providing for similar expenditures in League administered mandates in Africa if they had been proposed.

In addition to grants from the Colonial Development Fund, still greater sums have been given as "grants in aid" to British colonies and mandated territories. The total from 1921 to 1943 was calculated recently at \$152,000,000, or about 4 per cent of the total colonial revenues for that period.⁵ The figures may be compared with the grand total of all

² *Ibid.*

³ P.M.C. Min. XXXVII (1939), pp. 30-47.

⁴ Great Britain, Colonial Office, *Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of the Tanganyika Territory for the Year 1938*, Colonial No. 165 (London, 1939), p. 50.

⁵ Sir Bernard Bourdillon, "British Colonial Policy," *World Affairs*, Vol. 107 (1944), p. 83.

the League of Nations budgets for 1920 to 1938 (that is for the entire active life of the League), which were just over \$100,000,000. Grants in aid were made by other mandatory powers, e.g., South Africa gave South-West Africa about £550,000 in the period 1937 through 1939.⁶

On the international side, mandates were affected by two great factors—first, the regional treatment of Africa in the Berlin and Brussels Acts (which applied to the mandated as well as other territories); and second, by League action taken on a world scale without any special reference to mandates, but which affected them as well as the rest of Africa, e.g., the Slavery Convention of 1926.

The mandate system had a strict territorial application, and the provisions of Article 22 could be applied by the Mandates Commission, the Assembly, and the Council only in mandated territories, and then only in accordance with the special conditions governing each mandate as set out in the mandate text. The work of the Mandates Commission and of other League organs in supervising the operation of the mandate system did have a certain influence on other areas in Africa outside the mandated territories. But there was no legal or constitutional basis whereby the Commission, Assembly, or Council could extend any of the provisions of Article 22 or of the mandate texts to other African territories. The League, however, could take action in many fields by virtue of its general competence; and Article 23(b) of the Covenant, as we shall see below, gave it some basis for action in relation to dependencies in general. Thus by a route other than Article 22 the League could and did in practice extend some of the safeguards provided for in Article 22 to non-mandated territories.

The effect of the regional African conventions—the Berlin and Brussels Acts and their St. Germain revisions of 1919—on the League mandate system in Africa, and on the League activities in Africa apart from the mandate system, is difficult to disentangle. The conventions set up certain standards and rules to be applied by the parties to them in the territories which they covered, which included for most purposes those under League mandate. The Mandates Commission had thus the duty of seeing that these rules and standards were applied in the mandated areas; but it could do nothing about their application in adjoining territories not under mandate. As for the League itself, two courses were

⁶ Union of South Africa, *Report Presented by the Government of the Union of South Africa to the Council of the League of Nations concerning the Administration of South West Africa for the Year 1939*, U.G. No. 30—1940, p. 49.

open to it. One was to try to get the treaties working on a regional basis, i.e., in the way in which they were designed to work. Or it could make a fresh start and approach the matter on a universal basis, by prevailing upon the League members to agree to an international convention applying to all territories. And the new convention could be an improved model, better designed to achieve the objective than the rather vague and ill-drafted St. Germain conventions. The League could take up on the basis of its general competence a particular matter like slavery, where the cooperation of the governments was assured because of its humanitarian character, and could therefore, in effect, generalize throughout the world in a much improved convention a particular subject which the mandates and the Berlin and Brussels Acts covered less effectively. The League could thus in some cases do a better job on a world-wide basis—using as its instruments a general convention, and special League technical bodies, backed by the active interest and support of Assembly and Council—than its own mandate system could do in its own special area. The method worked successfully as regards slavery but not as regards the arms traffic. The attempt to universalize the provisions of the St. Germain arms traffic convention raised so many new and thorny problems that in the end the application of the convention in the limited area of Africa was impeded rather than assisted. In the case of the liquor traffic, on the other hand, the League made no attempt to take the matter up either on a regional or a general basis. It did little or nothing to secure the regional application of the St. Germain convention. The Assembly and Council confined their attention to liquor in relation to the mandated territories. The Mandates Commission did the best it could by seeing that the provisions were applied in these scattered territories. The situation was much the same as regards the open door, another important field covered by the Berlin Act as revised at St. Germain.

Thus, territorial trusteeship worked in its limited sphere, in some cases where a general League solution on a functional or non-territorial basis was not attempted and in others where it was tried but broke down.

This chapter and the next will examine therefore the relation of the League, and of the mandates part of it, to the matters covered by the African conventions—slavery, the arms and liquor traffic, the open door. It will be useful also to make some reference in this context to international labor aspects, since they illustrate much the same points. The International Labor Organization, like the League, worked on a par-

ticular problem on a functional rather than a territorial basis. Its parish was not only the seven African territories to which it gave special attention in the Mandates Commission, but all Africa and all parts of the world where a particular condition affecting labor was to be found.

2. REGIONALISM FOR AFRICA, AT PARIS AND AFTER

The drafters of the Covenant, as was mentioned above in Part I¹ regarded mandates as one wing of a larger design. The central feature of the design was Universalism, i.e., League action on matters of common world concern which, in theory at least, would benefit the whole world, including dependent territories in Africa. The other aspect of the design was the existing system of Regionalism for Africa in the form of the network of nineteenth-century multilateral treaties dealing with common African problems, mainly of a social and economic character. This was not regionalism in the political sense in which the word was used at Geneva (a local substitute for, or reinforcement of, general collective security), but something more modest. Two very different things were confused by calling them by the same name.

In practice things attempted on a world-wide scale were often ill adjusted to the special needs of the less highly advanced regions. Thus, to an undeveloped African people nine tenths of a highly elaborate international convention like the drugs limitation convention of 1931 must be completely unintelligible. In more than one case, by failing in an attempt to generalize for all countries a measure that Africa needed more than the advanced nations, the League did a disservice to that continent. But the League in general looked askance at regionalism in Africa or anywhere else as a tendency dangerous to League unity. Thus the stream that sprang from the Berlin African Conference of 1885 dwindled away because Geneva diverted from it some of the international energies that for twenty-five years had flowed strongly in this channel. This, it is true, was not the only reason for its drying-up. Another was that American withdrawal from the League involved the withholding of United States ratification of the St. Germain conventions since they were tied up with the League.

The mandate system, on the other hand, flourished. It was a novelty that intrigued the lawyers and satisfied public opinion that something

¹ Chapter V, section 1.

generous was being done for native populations. It captured the time and attention of the League. It filled many League documents and figured regularly in the meetings of the Council and Assembly. It took the greater part of the limited time and interest that most governments felt they could give to dependencies. A vast unofficial as well as official literature grew up around it. The illusion was fostered that if a person knew something of the mandate system (or rather of the Geneva end of it), he knew all that mattered of the vast field of dependent peoples. In short, mandates had stolen the show and the old broad view of Africa as an entity was pushed into the background.

This result was all the more striking since the British and American colonial experts concerned with the Peace Conference were even more concerned about perfecting the regional system for Africa as a whole, than putting six or seven of the territories under a new international form of trusteeship—which in any case they thought of as an adjunct to the Berlin Act system rather than as a substitute for it. They took completely for granted that Africa would continue to be treated on a regional basis under the new League system. The regional system of the Berlin and Brussels Acts was the chief point of their writings in connection with the colonial question at the Peace Conference.

Thus, on the British side, Professor Berriedale Keith, in *The Belgian Congo and the Berlin Act*,⁸ written in preparation for the Conference, assumed that the revision and extension of the Berlin Act would "be one of the most pressing duties of any League of Nations." Sir Sydney Olivier, in the pamphlet of 1918 already mentioned, deduced the mandate system in its main lines from the existing regional arrangements for Africa and anticipated that the new system would be an integral part of a regional treatment of Africa. Sir Harry Johnston, a leading British expert on Africa and colonial questions, also writing in 1918, foresaw the League as carrying on the process of "internationalising Africa" as worked out by the powers from 1885 onwards.⁹

On the British official side there was evidence of the same wide views, as witness an outline of British government policy given in November, 1918, by the British Foreign Office to the American Embassy. As reported by the latter to Washington, the proposals included mandates in many areas (including an American mandate for Palestine) and, among

⁸ Keith, *op. cit.*, p. 301 n.

⁹ Sir H. H. Johnston, "International Interference in African Affairs," *Journal of Comparative Legislation and International Law*, New Series, Vol. XVIII (1918), pp. 26-41.

other proposals for Africa, the following: "Belgian Congo under League with revision acts of Brussels and Berlin to apply to all tropical territory,"¹⁰ i.e., to all tropical territory in Africa.

On the American side, A. H. Snow's brief prepared in 1918 for the State Department took the same wide view of the requirements of Africa as a whole. He was concerned not merely with individual mandate precedents such as the "international trusteeship" set up for the "independent State of the Congo," but also with the work of the Berlin African Conference in setting up a "middle African zone of international jurisdiction"; it had given, he wrote, "an international character to the whole territory of middle Africa," making it "to some extent . . . a zone of international jurisdiction under international surveillance." He described the Berlin Conference as recognizing aboriginal tribes throughout Africa as "wards of the society of nations."¹¹

Still more significant were the views of G. L. Beer, chief of the Colonial Division of the American delegation, who played a leading part on colonial questions at the Peace Conference. In his Peace Conference memoranda prepared as briefs for the American delegation (and published after his death in 1923) he never lost sight of Africa as a whole. The mandate system was only one of his recommendations; he gave much thought to the renewal and strengthening of the broken web of general African treaties dealing with African problems from 1885 onwards. His own recommendations for tropical Africa were on bold lines going far beyond a new form of mandate government for a few African territories. His plan has a fresh interest because it anticipated in certain respects (periodical conference, and collection of data) the way in which the "Declaration regarding Non-Self-Governing Territories" of the United Nations Charter (Chapter XI), as interpreted by the First General Assembly in 1946, may develop. He based his conclusions on a close study of the working of the African treaties since 1885, and his proposals were designed to strengthen them at their main points of weakness. His proposals under the heading of "International Control" were to set up, "as a part of the organization of the League of Nations," machinery consisting of (1) "a special international conference for Tropical Africa, meeting periodically at fixed intervals"; (2) an "African court, having jurisdiction over all cases involving the interpretation of

¹⁰ Telegram from Slocum to March, *For. Rel. U. S., Paris Peace Conference*, 1919, Vol. I, pp. 408-9.

¹¹ Snow, *op. cit.*, pp. 21-22; 131-32, 154.

international acts regarding Tropical Africa and violations thereof"; (3) "a permanent central bureau for the collection, correlation, and study of all the data upon which these international agreements must be based."¹² The bureau was also to be under the League.

3. THE REVISION OF THE AFRICAN TREATIES, AND THE RÔLE ASSIGNED TO THE LEAGUE

Mr. Beer, in a memorandum in October, 1918, expressed the hope (which was also, as we have seen above, the hope of the British Foreign Office) that the Peace Conference, after disposing of its more urgent business, would "devote its attention to tropical Africa."¹³ This hope was realized. Revision of the network of African treaties was made an integral part of the Peace Conference.¹⁴ On June 25, 1919, three days before the signing of the Treaty of Versailles, a meeting of the Foreign Ministers of the five great powers appointed a commission to examine three draft conventions (drawn up by British and French representatives) for the revision of the Berlin and Brussels Acts, and to deal with the arms and liquor trade and other matters of common African concern.¹⁵ The Commission (with Mr. Beer as the principal American representative) met fourteen times between July 8 and September 8, 1919. It is clear from the detailed account of the discussions given by his secretary,¹⁶ as well as from the internal evidence of the texts of the revised treaties, that the delegates discussed on the assumption that their work was a whole of which mandates were merely a part, and that the African treaties would operate within the general framework of the League.

Thus an attempt, though rather a half-hearted one, was made to secure the insertion of provisions whereby the holding of periodical con-

¹² *Op. cit.*, pp. 440-41. See pp. 279-86 for his discussion of these proposals. He held that irregular conferences of limited scope could not secure the necessary support of public opinion. A conference reassembling "automatically at regular intervals," together with "obligatory arbitration," would prevent the powers from resorting to unilateral interpretations of international agreements.

¹³ *Ibid.*, p. 280.

¹⁴ It was taken up immediately after the signing on June 28 of the main treaty with Germany. As the Covenant formed part of each of the subsequent treaties, the revision of the African treaties was closely linked with its enactment.

¹⁵ *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. IV, pp. 856-57. The Commission's report was adopted on September 9, and the treaties were signed next day. *Ibid.*, Vol. VIII, pp. 165, 169-71. See below, Annex X, and note, for list of the revised treaties signed at St. Germain.

¹⁶ Beer, *op. cit.*, pp. xxxvii-xlii.

ferences for revision and adjustment of the treaties would become the responsibility of the League Council. Under the arms convention of September 10, 1919, revision can take place in seven years "if the Council of the League of Nations . . . so recommends." But there was no reference to the League in the convention revising the Berlin Act and the Declaration of Brussels. Article 15 of this convention provided that the signatory powers "will reassemble at the expiration of ten years" from the coming into force of the convention, i.e., ten years from July 31, 1920, to make "such modifications as experience may have shown to be necessary." No such conference was in fact held, as diplomatic exchanges between the parties, initiated by the British Government in July, 1930, showed no desire on their part to press for any amendments. The convention was regarded by general consent as being still in force at the outbreak of war in September, 1939. By Article 9 of the liquor convention (also of September 10, 1919) the contracting parties "reserve the right of introducing . . . by common agreement after a period of five years such modifications as may prove to be necessary." Here again the League was given no place in the procedure for keeping the convention up to date with changing circumstances.

But in the matter of secretariat, two of the conventions—arms and liquor—gave the League a foothold of which, at least in the latter case, it took little advantage. Article 5 of the Convention for the Control of the Trade in Arms and Ammunition, and Article 7 of the Convention relating to the Liquor Traffic in Africa, each provide for a "Central International Office, placed under the control of the League of Nations . . . for the purpose of collecting and preserving documents of all kinds exchanged by the High Contracting Parties" with reference to traffic in arms and liquor. Provision is also made in Article 5 of the arms convention whereby parties shall publish and send both to the Central International Office and to the Secretary General of the League "full statistical information as to the quantities and destination of all arms and ammunition exported without licence," together with an "annual report" showing export licences granted. Information of various other kinds necessary for the keeping of an oversight over the application of the convention has to be supplied under a number of articles to the Central Office. Measures required for the enforcement of the arms convention were to be communicated to the Central Office and to the Secretary General of the League; and the parties had to inform them of the competent authorities referred to in various articles. Likewise, by Arti-

cle 7 of the liquor convention, the parties must publish and send to the Central International Office and to the Secretary General of the League an annual report giving statistics on the liquor trade.

A noteworthy feature of these revised treaties was their extension to a wider area than before. The preamble of the arms traffic convention states that changed conditions "require more elaborate provisions [than in 1890] applicable to a wider area in Africa and the establishment of a corresponding régime in certain territories in Asia" The wider area in Africa included "the whole of the Continent of Africa with the exception of Algeria, Libya and the Union of South Africa." The convention extended expressly to mandated areas which were referred to in several articles. The liquor traffic convention applies to "the whole of the continent of Africa with the exception of Algiers, Tunis, Morocco, Libya, Egypt, and the Union of South Africa."¹⁷ It covered the mandated as well as other territories; but, as we shall see below, it provided for prohibition whereas the "B" mandates provided for "control."¹⁸

The attempts to get these conventions into force and the results achieved are dealt with in Chapter XV, below.

The St. Germain treaties, as multilateral conventions, were not regarded as abrogated by the Second World War. All the signatories of the St. Germain convention revising the Berlin and Brussels Acts became parties and remained so after the war. The United States ratified the convention (with reservations) on April 11, 1930. The parties at that date were the British Empire, Belgium, France, Japan, and Portugal. Italy ratified on April 14, 1931. The peacemaking following the Second World War offered a fresh possibility of revision of the African (Congo Basin) conventions. Since the United Nations Charter preceded the peace treaties, and was detached from them, revision could not be simultaneous with the drawing-up of the Charter. That revision to bring the Congo treaties into line with the Charter may be contemplated is shown by Article 42 of the Peace Treaty with Italy of February 10, 1947, which reads: "Italy shall accept and recognise any arrangements which may be made by the Allied and Associated Powers concerned for the modification of the Congo Basin Treaties with a view to bringing them into accord with the Charter of the United Nations."

¹⁷ All the signatories became parties: Britain (including the Dominions and India) and Belgium ratified in 1920; France in 1921; Portugal and Japan in 1922; the United States in 1929; Italy in 1930. Egypt adhered in 1924.

¹⁸ "C" mandates (e.g., South-West Africa) provided, however, for prohibition.

4. THE ANOMALY OF ARTICLE 23(b), GERM OF CHAPTER XI OF THE CHARTER OF THE UNITED NATIONS

The application through the League of Nations in the 1920's of the regional system of African treaties was rendered difficult because of the failure of the United States to join the League and her belated ratification of two of the treaties (the liquor convention in 1929, and the convention revising the Berlin and Brussels Acts in 1930). But the same explanation could hardly be advanced for the failure to put life into Article 23(b) of the Covenant. It reads:

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: . . . (b) undertake to secure just treatment of the native inhabitants of territories under their control.

These few lines of the Covenant had no history. An explanation of this statement is important from two points of view: first, because it throws light on the nature and development of the mandate system, and, secondly, because Article 23(b), while it remained dormant in the Covenant, grew into a whole important chapter in the Charter of the United Nations—namely, Chapter XI: Declaration regarding Non-Self-Governing Territories.

Article 23(b) was the outcome of the same general trend that produced the mandate system—the trend since the late eighteenth century towards concerted international action regarding dependent peoples. This had manifested itself, as we have seen, in international action on such matters as the slave trade, slavery, liquor, and arms traffic. National action by individual states had been followed by attempts at concerted international action, which culminated in international legislation in the form of multilateral conventions such as the Berlin and Brussels Acts. When the powers, faced with the problem of the disposal of German and Turkish territories, decided to adopt the method of the mandate, it was natural that they should incorporate in the new mandates the general principles and safeguards of these well-known international acts. But they could not have taken this step without asking themselves—and prompting the world to ask: Why not make the Covenant cover in some way all these fundamental human rights and safeguards for all dependencies? The answer was Article 23(b) of the Covenant.

There were also other parts of Article 23 that affected conditions in dependencies. Under paragraph (a), concerning labor, the "endeavor"

of League members to secure fair and humane conditions of labor had to go beyond their own frontiers to "all countries to which their commercial and industrial relations extend." Further, under paragraph (d), the League was given a "general supervision of the trade in arms and ammunition *with the countries in which the control of this traffic is necessary in the common interest.*" And, of course, the general clauses of the article relating to dangerous drugs, health, transit, etc., had a universal application which included dependencies. But all these clauses were concerned quite incidentally with dependencies as part of their field of world-wide application. Article 23(b) on the other hand applied only to "native inhabitants."¹⁹

Article 23(b) is one of the mysteries of the Covenant. It remained dead wood. It never became, as Dr. Moresco pointed out in 1939, "living law."²⁰ Each of the other six clauses of Article 23 budded and grew into one or more League "technical" organs. But from 23(b) nothing ever grew. It was not made the field of any League committee nor taken as a basis of action by Assembly or Council.

This is all the more surprising since Article 23(b) was a very late and deliberate addition to the Covenant. It appeared as Article 19(b) in the text of the Hurst-Miller draft of the Covenant as submitted on March 31, 1919, to the Drafting Committee of the League of Nations Commission.²¹ The addition, together with the references to dangerous drugs and to traffic in women, was due to Lord Robert Cecil. These belated new clauses were evidence of a desire to strengthen the humanitarian side of the Covenant. The addition of 23(b) could hardly have had any meaning unless the intention had been to give the League a general competence which without these words it might not have been deemed to possess, and which it certainly could not possess merely by virtue of Article 22 since that article had a strict territorial limitation.

International conferences draft clauses like this after the manner of their kind. They are not an international legislature able to keep a continuous oversight of legislation, and to coordinate and amend. Their

¹⁹ It might be argued that the phrase "native inhabitants of territories under their control" could cover not merely inhabitants in territories detached from the metropolitan state, but also indigenous inhabitants within the continental area of that state which had been overrun by migrants from outside, e.g., in Australia, South Africa, the U.S.S.R., etc.

²⁰ Emanuel Moresco, *op. cit.*, p. 204.

²¹ David Hunter Miller, *op. cit.*, Vol. II, pp. 658, 665. This article had been presented, as a British amendment, to the League Commission at its thirteenth meeting, March 26, 1919. *Ibid.*, pp. 355-56.

different commissions work under pressure, in separate compartments, and on the assumption that the loose ends one commission may leave will somehow be tied up by another. There was in fact a considerable amount of overlapping between the general clauses of Article 23 of the Covenant and the ground to be covered in the subsequent discussion on the revision of the general African treaties.

It may well be that the *raison d'être* of the clause was the knowledge of the delegates that another commission of the Peace Conference was about to begin on the revision of the Berlin and Brussels Acts, that the revised treaties were intended to cover virtually the whole of Africa and even extend in some cases into Asia, and that it was planned to link them organically at a number of points with the permanent machinery of the League. Just what agreements the African Commission would reach, in the matter of placing the African treaties under League supervision, could not be exactly foreseen. But obviously a clause in the Covenant other than the mandates article would be useful, if not indispensable, in giving the League a foothold for action under these international African conventions "hereafter to be agreed upon." These words from the preamble of Article 23 may well have been written with precisely these African treaties in mind, since they were known to be pending treaties of the kind envisaged by the preamble.

In the discussion at the Peace Conference as to the powers of supervision the League would have under the wide general wording of Article 23, Lord Robert Cecil made the point that "the supervision was to depend upon subsequent international agreements."²² Thus the minutes of the Peace Conference support the narrower interpretation of Article 23 which most of the commentators on the Covenant accepted. The article, it has been argued, gave no general competence apart from the powers conferred on the League by "international conventions existing or hereafter to be agreed upon." This was the view taken in a memorandum by the British Government on September 18, 1926, on the interpretation of the preamble and Articles 3 and 4 of the Covenant, which dealt with the competence of the Council and the Assembly. For the League to act on matters referred to in Article 23 (which are matters mainly of national competence), the memorandum held, there must be a treaty empowering it to act, or an international bureau of the kind mentioned in Article 24.

²² Quoted by J. M. Yepes and Pereira da Silva, *Commentaire théorique et pratique du Pacte de la Société des Nations et des Statuts de l'Union Panaméricaine* (Paris: Editions A. Pedone, 1934-39), Tome III (1939), p. 247.

Article 23(b) was thus by general consent put on the shelf as a sort of functionless appendix. J. Ray, in his commentary on the Covenant, described it as not part of the "domaine véritable" of Article 23.²³ This was compatible with the common but loose assumption at Geneva that Article 23(b) was in fact more or less a duplication of Article 22, and that no League committee or Assembly or Council action was needed to implement it, since the Mandates Commission was looking after the matter. Hence also the common view that the words "just treatment," though they had never been defined by any League body, were in fact clearly enough defined by the general principles and safeguards of Article 22. This view was never accepted by the governments most directly concerned. For on any common-sense interpretation of "just treatment" it could hardly be held that non-fortification and the open door—opening freely inwards to permit economic penetration of the native territories by all countries—were in fact in the interests of the native inhabitants.²⁴

This narrow interpretation of Article 23(b) was, however, open to challenge. The most recent commentary on the Covenant by J. M. Yepes and Pereira da Silva took the view that on a proper construction of the article the League had a general competence *unless this had been modified or negated by some international convention*.²⁵

The First Assembly of the League, in the report of its First Committee adopted on December 7, 1920, did not regard the clause as preventing the League from acting in this field. The Assembly held that the League had no direct competence as regards paragraphs (a), (b), (e), and (f), which concerned labor, native inhabitants, trade and communications, and health, respectively. These paragraphs of Article 23 stipulated that the *governments* would "endeavour" or "undertake" to do certain things; while, according to paragraphs (c) and (d), relating to dangerous drugs and arms traffic, the governments would "*entrust the League*" to do certain things. For (a), (b), (e) and (f), the Assembly agreed, the responsibility of the governments represented at the Assembly, being external to the Assembly, cannot be engaged. The action of the Assembly should accordingly take the form of a recom-

²³ Jean Ray, *Commentaire du Pacte de la Société des Nations selon la politique et la jurisprudence des organes de la Société* (Paris: Librairie du Recueil Sirey (Société anonyme), 1930), p. 650.

²⁴ Hence the qualification introduced into the United Nations Charter that the open door must be "without prejudice" to native interests (Article 76(d)); and the abandonment in Article 84 of the non-fortification provision of the Covenant.

²⁵ *Op. cit.*, p. 247.

mendation or invitation leading up to agreements between the governments giving the League power to act.²⁶ It was under this general competence, with the free cooperation of the governments, that many of the League's technical committees operated. And even in a field (like dangerous drugs, Article 23[c]) which was regulated by international treaties, some of the most important of the instruments and procedures of the League had no treaty basis. Thus the annual reports on dangerous drugs had no conventional basis until the League practice in this matter in its first years was finally given a legal basis by Article 21 of the drugs limitation convention of 1931.²⁷

The League's inertia about general African problems was hardly then a matter of legal limitation. For there was both this general competence and the specific competence given under some of the clauses of the St. Germain African conventions. The cause of the inertia was partly that no general competence could be exercised in relation to matters of special concern to Africa as a whole without the consent of the governments. And they were inclined to take the view that the League already had its hands full in dealing with the mandated territories. Behind this attitude lay the fear that if the League, with its majority of "non-colonial" powers, dabbled too much with dependent areas as such, the result might be a movement to break down existing sovereignties and pool the dependent areas controlled by a few League members in a widened mandate system. Neither in the twenties nor in the thirties was such a development really possible without shaking the League to its foundations and precipitating a power struggle in which the interests of the dependent peoples were bound to suffer.

This raises the interesting question to which Sir Alfred Zimmern has referred: What might have happened if the Covenant had contained only the general principle of Article 23(b) and not the practical program into which Article 22 seemed to translate it for fourteen territories? There might well have been in that case, he suggested, "greater progress in regard to colonial problems as a whole, since the defensive reaction set up by the system imposed under [Article] XXII would have been absent."²⁸

²⁶ Document 20/48/159/1., L.N., *The Records of the First Assembly, Plenary Meetings (Meetings Held from the 15th of November to the 18th of December 1920)*, Geneva, 1920, pp. 300-3; 318-20.

²⁷ See author's commentary on the convention: *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13th, 1931; Historical and Technical Study by the Opium Traffic Section of the Secretariat of the League of Nations* (Geneva, 1937), L.N. Document C.191.M.136.1937.XI., p. 212.

²⁸ Zimmern, *op. cit.*, p. 300 n.

Here too is to be found at least part of the explanation why the League Council and the mandatory powers were reluctant to support the assumption by the Mandates Commission of activities in relation to mandated territories not provided for in the Covenant or the mandate texts.²⁹

5. THE UNITY OF AFRICAN PROBLEMS AND THE LEAGUE'S ATTITUDE TOWARDS THEM

A further reason for the League's inaction on matters of special concern to Africa and other dependent areas has already been mentioned. The League was preoccupied with problems of general world concern. Moreover, Geneva tended to be afraid of or at least vaguely troubled about regionalism. The reason for this was the fear often heard in the corridors that the setting up of regional bodies (Pan American, Pacific and Far Eastern, even European Union) might undermine or split up the League by diverting the interests and activities of the governments away from the central organization at Geneva. Such talk of regionalism as there was at the League's capital, apart from the ineffective discussions on the European Union, was mainly in the context of disarmament and collective security.³⁰

Occasionally regional conferences were held on particular subjects which were of special concern to dependent areas, e.g., the Opium-Smoking Conference in Bangkok in 1931, the Rural Hygiene Conference in Bandoeng, Java, in 1937, and the Pan-African Health Conference at Johannesburg in November, 1935, and an earlier conference at Cape-town in 1932. There was, also, one important permanent regional body in the field of health; namely, the Epidemiological Office at Singapore. But during the life of the League very little was done to encourage the handling of common African problems on a regional basis.

The one part of the League which devoted much attention to Africa was the Health Committee and the Health Section, together with the Office International de l'Hygiène Publique at Paris. Africa was in special need of such attention because its chief diseases were tropical and

²⁹ E.g., during the discussion of the enlarged questionnaire. See above, Chapter XII, section 5.

³⁰ This is also the emphasis of the United Nations Charter: Chapter VIII, "Regional Arrangements." On the European Union, see *Documents relating to the Organisation of a System of European Federal Union*, L.N. Document A.46.1930. VII; also Commission of Enquiry for European Union, *Minutes of the Third Session of the Commission Held at Geneva from May 15th to 21st, 1931*, L.N. Document C.395.M.158.1931.VII.

covered most of the continent. Unlike many diseases of the temperate regions, a single attack of which gives immunity, tropical diseases, like malaria, yaws, and dysentery, are permanently debilitating to native and foreigner alike.³¹ The work of these health bodies was singled out for special commendation in Dr. Worthington's *Science in Africa*. Their work on sleeping sickness, malaria, tuberculosis, leprosy, and public health services "has been," he wrote in 1938, "of great value to Africa." Likewise the International Sanitary Convention for Aerial Navigation signed at The Hague in 1933 was of "special significance for Africa."³²

Dr. Worthington's monumental survey—the first attempt to describe "the extent to which scientific knowledge and research are being applied to the continent of Africa" (in the words of Lord Hailey's foreword)—is important from the point of view of a judgment of the value of the League's work in relation to Africa. It demonstrates two points: (1) the vast amount of scientific work being done on African problems by government agencies, mainly British, French, Belgian, and South African, as well as by private initiative (this covered many fields such as, to mention only a few, health, nutrition, animal industry, agriculture, forestry, entomology, botany); (2) the extremely small part that the League of Nations played in all this activity.

In theory things done or enquiries made on a world-wide scale should have benefited dependent territories as much as independent states. In practice this was rarely the case because of the gulf between the problems and needs and statistical services of undeveloped areas and those of advanced nations. Nutrition was a good example. The League's studies of nutrition practically left Africa out of account though malnutrition in Africa was at least as great as that in other areas.³³

The mandatory was obliged by the terms of the mandates (e.g., Tanganyika, Article 9) to apply general international conventions on such matters as the open door, the slave trade, and the traffic in arms, liquor, and dangerous drugs. And it was the responsibility of the Man-

³¹ Leys, *op. cit.*, pp. 282-83.

³² E. B. Worthington, *Science in Africa: A Review of Scientific Research relating to Tropical and Southern Africa* (London, etc.: Oxford University Press, 1938. Issued by the Committee of the African Research Survey under the auspices of the Royal Institute of International Affairs), pp. 464 and 463. The Health Committee, as Dr. Worthington's bibliography shows, was responsible for a series of studies of different diseases prevalent in Africa from 1924 onwards.

It may be added here that a League Health Mission undertook a preliminary inquiry into health conditions in the Pacific Islands, particularly New Guinea. *P.M.C. Min.* XV (1929), p. 13.

³³ Moresco, *op. cit.*, pp. 215-16.

dates Commission to see that this obligation was carried out. But the more the League concentrated on world-wide lines on some problem such as dangerous drugs, the more a specialized League body tended to take over from the Mandates Commission the responsibility both for collecting the necessary specialized data and for exercising international supervision over the carrying out of the convention in the mandated territories. The specialized League technical organ was necessarily more competent to judge just what data and legislative measures were needed to apply the convention. In the case of dangerous drugs, for example, the dangerous-drugs section of the Secretariat and the three dangerous-drugs bodies of the League had far more complete information on all aspects of the problem as it affected mandates than the *Mandates Commission*. The annual reports made to the Commission contained only incidental references to dangerous drugs, and any data they contained was too limited and out of date to be of value to the Opium Advisory Committee. In practice, therefore, the Mandates Commission left this specialized field to the special League bodies directly concerned with the enforcement in all areas of the international drug conventions.

The Mandates Commission was not composed of specialists in the fields of medicine, tropical agriculture, and like subjects. Experts in such specialized fields sometimes gave it voluminous evidence which might better have been given to the appropriate League technical committee,⁸⁴ since the Commission lacked the technical background to enable it to evaluate the data.

The revived interest in Africa as a region which became manifest in the 1930's both in Europe and America took place outside the League. It was due partly to governments and partly to private institutions.⁸⁵ It was based on many factors, including the new climate caused in part by the mandates system, as well as by such factors as greatly improved means of communication. Most important of all was perhaps what Lord Hailey has referred to as a new interpretation by some governments of trusteeship. The old interpretation limited the rôle of the state to that of protecting rights and safeguarding various "freedoms";

⁸⁴ See, for example, the valuable survey of public health in Ruanda Urundi given by a medical officer at the last (thirty-seventh) session of the Commission.

⁸⁵ E.g., Raymond L. Buell, *The Native Problem in Africa* (New York: The Macmillan Company, 1928); studies issued by the Phelps-Stokes Fund; and in Great Britain the studies of the Royal Institute of International Affairs directed by Lord Hailey.

but otherwise the rule of *laissez-faire* applied. The new conception of the state which was forcing its way from domestic into colonial policies was, he declared, that of "the State as the chief agency for social welfare."⁸⁶

In the light of this more positive and active conception, many African problems were seen to be not localized in a territory but common to the whole continent. For their solution they required the mobilization of scientists and technicians on a scale far beyond that which any single area could ever command. Diseases, locusts, and airplanes ranged over the whole continent, or vast areas of it. So did more subtle economic forces. The economic and social structure of the continent was seen to be profoundly affected and the old customary life changed by "the all-pervading influence of purely economic changes"—"the growing of cash crops, the earning of wages, the travelling back and forward to the mines." Common experiences such as this, as well as older common factors such as climate and disease, were giving Africa "its character as a single unit."⁸⁷

Most of the aspects of Lord Hailey's *Survey* covered matters common to all Africa south of the Sahara, which includes all the mandated territories. Among them are surveying and mapping, forests and water supply, agriculture and land policies, education and labor problems, to mention only a few. Thus, erosion is a problem covering almost the entire continent. "The main lines of any conservation policy," Lord Hailey pointed out, "must be the same throughout tropical Africa."⁸⁸ Correlation of the policies of all the governments was a matter of urgency. This one problem alone involved in fact a whole series of problems—land tenure, native agriculture, tsetse fly measures, export crops, veldt burning, overstocking of pastures, forests, water supplies—which knew nothing of the artificial mandate frontiers. Neither did the locust. Large "swarms of migratory locusts" were reported on page 33 of the Tanganyika annual report for 1938. Eighteen months later, in December, 1939, the Mandates Commission asked a question about them. This was about all it could do, since the locust (even more than the mosquito or the tsetse fly) is a large-scale international and not a territorial problem. Anti-locust campaigns had to be organized by the Middle East Supply Center during the war as a vital war measure to

⁸⁶ Great Britain, *Parliamentary Debates, House of Lords, Official Report*, Vol. 122, No. 48, May 6, 1942.

⁸⁷ Lord Hailey, "Some Problems Dealt with in the 'African Survey,'" *International Affairs* (London: Royal Institute of International Affairs, 1939), pp. 194-95.

⁸⁸ Hailey, *African Survey*, *op. cit.*, pp. 1108-13.

save food crops. For this an organization semimilitary in character was needed (with some of its supplies procured through the war-supply machinery in Cairo, London, and Washington). Its scale of operations had to cover the whole range of the locust from Tanganyika to Egypt, from Egypt to Iraq, from Iraq through Persia to India.

The British and French governments (which with other governments had long ago seen the unity of the continent in respect of matters dealt with by the African treaties—slavery, arms and liquor traffic, and so forth) began to realize the need of grouping territories in wider administrative unions in order to mitigate the evils caused by the haphazard setting-up of a large number of separate colonial administrations. The taking-over of Tanganyika by Britain under mandate led to proposals after the war by various British authorities on Africa for an East African federation to include Kenya, Uganda, Tanganyika, Nyasaland, Northern Rhodesia, and Zanzibar.³⁹ But despite much study on the spot by visiting commissions and the issue of a number of bluebooks, the idea of a "United East Africa" did not advance beyond the holding from 1926 onwards of a regular East African Governors Conference. This has come to be regarded as in permanent session, to be convened at any time the need arises, and in practice it meets once a year. As between Kenya, Uganda, and Tanganyika a customs union (since 1927) and a postal union since 1933, as well as collaboration between the railway systems, have existed for a number of years. This is in conformity with Article 10 of the mandate, which permits "a customs, fiscal and administrative union or federation with the adjacent territories" provided the terms of the mandate are not infringed.⁴⁰

³⁹ Hailey, *African Survey*, *op. cit.*, pp. 181-85; and Great Britain, Colonial Office, *Papers relating to the Question of the Closer Union of Kenya, Uganda, and the Tanganyika Territory*, Colonial No. 57 (London, 1931).

⁴⁰ The setting-up of a Central African Council with a permanent interterritorial Secretariat for Northern and Southern Rhodesia and Nyasaland to secure "co-ordination of the policy and action" was announced on October 18, 1944, by the Secretary of State for the Dominions. "It is contemplated," he said, "that it should deal with communications, economic relations, industrial development, research, labour, education, agricultural, veterinary and medical matters, currency and such other matters as may be agreed between the three Governments." *Journal of the Parliaments of the Empire*, Vol. XXV (1944), p. 774.

According to a statement made to the British Parliament on July 9, 1946, a West African Council of the four British West African Governors and senior service representatives held its first meeting in January, 1946, under the chairmanship of the Secretary of State for Colonies. The Council has a permanent office in West Africa. An Assistant Under Secretary of State from the Colonial Office was named as its first Chief Secretary.

For references to recent developments toward regionalism in the shape of the Caribbean Commission and the South Pacific Commission, see above, Part I, Chapter V.

As we have seen above,⁴¹ the Mandates Commission, while in no way opposed to regionalism of the kind provided for in the African conventions, was inclined to see infringement of the mandate in any development which appeared to carry with it even the implication of uniting a mandate in a political or constitutional union with adjacent territories. It consistently challenged any phraseology used in public declarations, laws, or agreements which stated or implied that a mandatory "possesses sovereignty" or that a mandate was "administratively united" with a neighboring colony.⁴² It was ready to admit that a customs union between a small territory like Ruanda Urundi and the immense territory of the Belgian Congo worked out greatly to the advantage of the mandate. Thus the French member, M. Giraud, pointed out at the last session of the Commission that the mandate sent exports to the Congo in 1938 valued at 26,000,000 francs as against imports from the Congo of 14,000,000.⁴³

The somewhat negative rôle to which its powers and its policy confined the Commission was shown on this occasion. Its main preoccupation was whether the mandated territory received its due share of taxes imposed on companies operating in both territories, a point raised in its thirty-fifth session, on which it received satisfaction in 1939.

Perhaps, in conclusion, the matter may be put into the following generalization, which, like most generalizations, says both too much and too little. The general policy of the League was on the whole unfavorable to regionalism on the ground that the League must be universal and apply wherever possible universal solutions. And in its narrower sphere the Mandates Commission used its powers and influence against regional unions on the ground that they infringed the true theory of the mandate by implying that the mandatory possessed sovereignty.

⁴¹ Part I, Chapter VII, section 4 (b).

⁴² For such cases referring to South-West Africa, Ruanda-Urundi, French Togoland, and Cameroons, see Bentwich, *op. cit.*, pp. 96-97; also Oppenheim, *op. cit.*, Vol. I (1937), pp. 197-200, and Quincy Wright, *op. cit.*, pp. 500 *et seq.*

⁴³ P.M.C. *Mém.* XXXVII (1939), p. 42.

CHAPTER XV

THE APPLICATION IN THE MANDATES OF INTERNATIONAL CONVENTIONS

I. THE SPECIAL NEEDS OF DEPENDENT AREAS AND THE SPECIAL RELATION OF INTERNATIONAL LEGISLATION TO THEM

The "B" (not "C") mandates, except Tanganyika, stipulated that the mandatory should apply to the territory "any general international conventions applicable to his contiguous territory." The Tanganyika mandate (Article 9) replaced the words "applicable to his contiguous territory" by the phrase "already existing, or which may be concluded hereafter, with the approval of the League of Nations, respecting the slave trade, the traffic in arms and ammunition, the liquor traffic, and the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation, railways, postal, telegraphic, and wireless communication, and industrial, literary and artistic property."¹

The imperative used in the "A" and "B" mandates—the Mandatory *shall apply (adhere to)*—made these mandated territories areas of full application of international legislation in which, for the list of important subjects enumerated, the mandatory power was obliged to apply existing or subsequent conventions. The international conference legislating ("with the approval of the League of Nations") in any of the fields listed had thus a position in relation to the mandated territories which was unique. Its writ ran in these territories as it ran nowhere else.

But international conventions outside these limited fields had little relevance generally for the mandated territories. Apart from the few social, humanitarian, sanitary, and a certain number of international labor conventions, the general body of League treaties was expressly designed to meet the more specialized needs of industrialized western society. They had little direct relationship therefore to the needs of the less advanced societies of dependent areas. Thus, League conventions

¹ The Palestine and Syrian mandates (Articles 19 and 12 respectively) have a clause similar to that for Tanganyika. The "C" mandates had no such clause but repeated the safeguards of paragraph 5 of Article 22 of the Covenant and referred, specifically to the St. Germain arms traffic convention.

in the list of conventions concluded under the auspices of the League in the following general fields—unification of law, settlement of conflicts of law and punishment of offenses, communications and transit, international trade, education, even veterinary conventions—had little meaning for native African societies.

The Mandates Commission sought to secure from the mandatory powers in their annual reports a regular accounting as regards the international conventions applied within the territory. Governments which had failed to include such a list in their annual reports were pressed to do so.² The list submitted in the annual report for the British Cameroons for the year 1938 (Colonial 1939, No. 170), showed 44 multi-lateral agreements and conventions applied to the Cameroons since 1922. There had also been applied to the territory 20 commercial treaties and 42 extradition treaties; 18 conventions regarding legal proceedings in civil and commercial matters; 8 visa abolition agreements; 7 arrangements regarding documents of identity for aircraft personnel; 6 agreements regarding tonnage measurements of merchant ships; and 4 other miscellaneous treaties.

The Commission was always on the watch against the danger that the peoples in mandated areas might suffer because of their peculiar status. It tried to ensure that they should receive the same type of benefits as other dependencies of the mandatory power. This was particularly important in the case of commercial treaties. Under British law (as under that of other colonial powers) a bilateral treaty, e.g., a "commercial" treaty, does not apply of necessity to a colony or mandate. Thus, for a mandated territory to obtain the benefits secured to British subjects under such a treaty it has to be extended specially to that area.³ By 1931 the Mandates Commission, the Council, and the mandatory powers had reached a working rule that treaties of this kind should be extended regularly to the mandated territories.

The subjects enumerated in Article 9 of the Tanganyika mandate cited above were mostly those of the St. Germain conventions revising the Berlin and Brussels Acts, or matters referred to in Articles 22 and 23 of the Covenant. Under either of the alternative wordings cited it was the duty of the Mandates Commission to supervise the application, *inter alia*, of the St. Germain conventions. Article 7 of the Tanganyika man-

² P.M.C. Min. XXXVII (1939), p. 56.

³ Sir Arnold Duncan McNair, *The Law of Treaties; British Practice and Opinion* (New York: Columbia University Press; Oxford: At the Clarendon Press, 1938), pp. 76-79.

date (and other "B" mandates) elaborated further what was meant by "commercial equality" (or the open door) and the obligations of the mandatory in this respect; while Article 5 gave a similar elaboration as regards slavery, the slave trade, and contract labor, and called for the exercise of "a strict control over the traffic in arms and ammunition and the sale of spirituous liquors."

In these matters, or most of them, the Mandates Commission was buttressed by the triple strength of the mandate, the Covenant, and the multilateral international conventions. The fact that the Commission had the opportunity to secure the maximum application of an international standard or rule in seven rather typical African territories and as many more in Asia and the Pacific, placed in its hands a powerful means of influencing the enforcement of such standards and rules over the whole area to which they were applied by the convention concerned. The obligations of such a treaty are clear and specific, and once the Commission could lay its finger on an abuse or weakness in a mandated area, it gave ministers and parliament—and especially opposition members—a clue that might point to similar abuses or weaknesses in a dependency not under international mandate, but subject all the same to the St. Germain or other international conventions. Where the League had no committee actively engaged in supervising the application of a convention, as was the case with liquor and the open door in the Conventional Basin of the Congo, the Mandates Commission was in a uniquely favorable position to exercise an influence extending throughout Africa, and even the entire dependent world. For it had the field to itself and powers and specific responsibilities—not merely over a particular subject but in relation to specific territories—such as were not usually possessed by a League Committee. The experience of the Commission as regards the application in the mandated areas of the provisions of the St. Germain African treaties is thus of special importance.⁴

⁴ There were of course other conventions of special importance to Africa on which the Commission kept a watchful eye, such as the Convention concerning the Preservation of Fauna and Flora in Their Natural State, of November 8, 1933. At the thirty-fifth session of the Commission (October, 1938), the chairman drew the attention of the accredited representative for British Togoland to questions put in the House of Commons on three occasions in the past year on the application of this convention to the territories in Africa, and asked whether any sanctuaries for wild life had been set aside in Togo to which the convention applied. *P.M.C. Min. XXXV* (1938), p. 26.

2. THE ARMS TRAFFIC CONVENTION

Concerning the application of particular St. Germain conventions, the story of failure as regards the arms traffic convention is soon told. If it could have been dealt with as a purely African matter it might have been the easiest of all the conventions to apply.

The First Assembly, which had before it a memorandum by Sir Cecil Hurst on the subject, invited the Council to urge all governments to ratify the St. Germain convention.⁵ The League's attempts in the next two years to get the St. Germain African convention ratified by at least the principal arms-producing states broke down finally in September, 1923, over the refusal of the United States to ratify—partly on the ground that the convention was tied in certain of its clauses to the League of Nations.⁶ Geneva then had two courses open—either to wait till the United States became less intransigent about the League or to follow its own philosophy of universality and to attempt a solution on universal lines. It chose the latter, and fatal, course. A conference convened by the League adopted on June 17, 1925, a general international convention providing for "a general system of supervision and publicity for the international trade in arms and a special system for certain parts of the world in which special measures were considered necessary,"⁷ i.e., most of Africa and the Middle East. This convention never entered into force,⁸ since in attempting to give it a world-wide scope, the League had permitted insoluble problems to enter, such as control over the private manufacture of arms. No solutions were possible because such problems were the outer layers of the great central problem of war. And so, finally in the thirties, the limited plan for Africa foundered in the morass of the general Disarmament Conference. The powers that ratified—

⁵ *The Records of the First Assembly, Meetings of the Committees*, Vol. II (Geneva, 1920), pp. 342-47. The convention had been signed by all the Allied Powers at Paris. One of its clauses pledged them to do their utmost to induce all League members to ratify it. And by Article 23(d) of the Covenant, the members of the League entrusted the League with the general supervision of the arms traffic "with the countries in which the control of this traffic is necessary in the common interest," i.e., Africa in particular, which was already covered by an unratified convention.

⁶ League of Nations, *Ten Years of World Co-operation*, op. cit., pp. 112 et seq.

⁷ *Ibid.*

⁸ *Signatures, Ratifications, and Accessions in respect of Agreements and Conventions Concluded under the Auspices of the League of Nations*, 21st List, L.N., *Official Journal*, Special Supplement No. 193 (Geneva, 1944).

The League's *Statistical Year-book of the Trade in Arms and Ammunition* contained statistics published by governments covering Africa as well as other parts of the world.

United States, United Kingdom, France, and others—did so on condition that other arms-producing states also ratify, a condition never fulfilled. Failure to bring into force either the 1919 St. Germain convention or that of 1925 opened up an international black market in surplus war stores that fed disorder and civil war in various parts of the world, including China.

Reference will be made in the following sections to slavery, the liquor traffic, and the open door, taking them in their ascending order of difficulty. The application of each convention in Africa was affected by the international climate. Slavery was the least difficult from this point of view. Governments had no vested interests in slavery any more than they had in dangerous drugs, and in both cases public opinion was in favor of drastic action by governments, individually and in concert through the League. On the other hand, though there was some humanitarian support for League action on the liquor traffic, the League always resisted attempts to make this a general League matter on the ground that if it attempted to tackle the problem as one of world-wide concern, it would stir up a veritable hornet's nest of conflicting emotions and interests. The private slogan in the Secretariat was therefore 'Keep away from drink.'

The open door was one of the two or three principal fields of successful activity of the Mandates Commission. Yet here the influence of its activities was largely confined to the mandated territories and hardly extended even into the other areas included in the Conventional Basin of the Congo. The international climate was not propitious to such influence. Neither the United States nor Italy became a party to the St. Germain convention till 1930 and 1931, respectively; and by that time the world slump and the general adoption of high tariff and trade-restriction policies made the open-door policy seem an academic issue. On the other hand, the absence of any special international body to supervise the open-door principle in the Conventional Basin of the Congo, and the inability of the League Economic Committee to make any headway against trade restrictions in general, left the Mandates Commission free to plough its narrow furrow alone in its territories, which it did with some success.

3. SLAVERY

Most of the League work in connection with slavery was done not by the Mandates Commission, which had a subordinate rôle, but by the

League as a whole—the Assembly, the Council, *ad hoc* League committees, a League Conference of Governments, the International Labor Organization, and finally, from 1934, the Advisory Committee of Experts on Slavery. It was the League as a whole using all its powers and instruments, rather than its mandate system, that had broken the back of slavery in Africa just before the Nazis were to restore it on a fantastic scale in German-occupied Europe.

The League went far beyond regional enforcement on the African continent of the convention revising the Berlin and Brussels Acts, signed at St. Germain in 1919. It extended even more stringent provisions to all continents. The League applied to the whole world a mandate clause which the Covenant sought to apply, in a weaker form, merely to the few mandated territories. This was a victory for Article 23(b), rather than Article 22 of the Covenant.

The League's success might not have been possible without the foundations laid by the Brussels Act of 1890, which is still in force in so far as it has not been superseded by later conventions.⁹ To this day this Act must impress the reader of its text as a remarkable piece of international legislation. It analyzed clearly into its elements a most complex set of problems—the slave trade with its intimate relations to the arms and liquor traffic. It made provision, moreover (with many anticipations of League procedures), for an elaborate system of international supervision, with international offices, exchanges of laws, of judicial decisions, of statistical data, and other documentation (Articles 74 to 85). But it dealt only with the slave trade and not with the basic and more difficult problem of slavery as an institution which even in the post-war decade was still tolerated in a few parts of the world.

The mandates clause of the Covenant provided only for "the prohibition of abuses such as the *slave trade*," and this formula was followed in the texts of the "C" mandates—one of which was in Africa. Neither Article 22 nor the "C" mandates provided for the abolition of *slavery*. The St. Germain convention of September 10, 1919, revising the Berlin and Brussels Acts, drafted by the powers some weeks after the Covenant, included an obligation "to secure the complete suppression of slavery in all its forms." And this obligation was repeated with still more precision

⁹ See A. L. Warnshuis, Joseph P. Chamberlin, and Quincy Wright, "The Slavery Convention of Geneva, September 25, 1926; Text of the General Act for the Repression of African Slave Trade, July 2, 1890," *International Conciliation*, January, 1928, No. 236 (New York: Carnegie Endowment for International Peace, Division of Intercourse and Education), pp. 9-10, 12-21.

in the texts of the "B" mandates (e.g., Article 5, Tanganyika), all of which were African. Moreover the "B" mandates contained two further important obligations which gave a most useful foothold to the International Labor Organization, namely, (1) the prohibition of all forms of "forced or compulsory labour, except for essential public works and services"; and (2) "the careful supervision of labour contracts and the recruiting of labour" (Article 5, Tanganyika).¹⁰

It was these mandate clauses, supplemented by the League Slavery Convention of 1926,¹¹ that gave the Permanent Mandates Commission the basis for its work of supervision in the limited number of territories within its sphere. It continued throughout its existence to receive information from governments in their annual reports and statements made by their accredited representatives. In the first decade of its work, with the active cooperation of the mandatories, most of the situations involving slavery in some form in the mandated territories were cleared up.¹² But its action was overshadowed by the more spectacular services of the League in attacking slavery on a universal basis. For this purpose, on the initiative of the Assembly, a Temporary Slavery Committee was set up in 1924 to 1925, a general international convention negotiated in 1926, and an Advisory Committee of Experts on Slavery set up by Assembly resolution of October 12, 1932, to supervise the operation of the convention and to deal with all aspects of slavery in all territories, including the mandates.

The League Assembly took up the question of slavery at its Third Session (1922). Its action led to the setting-up in 1924 of the Temporary Slavery Committee of eight members to investigate and report on the facts. Three of the eight members were also members of the Mandates Commission. The Mandates Commission, through its members acting individually, thus took an important if indirect part in the preparations that led finally to the drafting and opening for signature at the Seventh Assembly of the Slavery Convention of September 25, 1926.¹³ The aim of this convention was to secure the complete suppression of all

¹⁰ The "C" mandates (Article 3) omitted the second of these. See below, section 6, on the ILO.

¹¹ Japan did not become a party to this convention, which did not apply therefore in the Japanese mandate.

¹² For cases, see League of Nations, *The Mandates System*, *op. cit.*, pp. 52-58.

¹³ In force on March 9, 1927. The last (21st) *List of Ratifications, etc.*, published by the League, showed it had in 1944 forty-one ratifications or definitive accessions. Twenty-eight states were listed as not having ratified, including fifteen Latin American states, Japan, and the U.S.S.R. *Official Journal*, Special Supplement No. 193, *op. cit.*

forms of slavery and slave trade, thus supplementing and making more effective the Brussels Act of 1890 and the St. Germain revision of 1919. Comprehensive definitions of slavery and forced labor were adopted. By an Assembly resolution of September 25, 1926, laws and regulations circulated by governments through the Secretary General of the League, by virtue of Article 7 of the convention, together with any "supplementary information" governments might furnish "spontaneously," were to be made the subject of an annual report by the Secretary General. This was reinforced by a further resolution on September 21, 1929, instructing the Secretary General to collect from states parties to the convention, both members and non-members of the League, "all possible information on the present position of slavery." There thus appeared regularly on the agenda of the League Assembly up to 1933 a special item in the following form: Slavery: (1) Annual Report by the Council; (2) Report by the Secretary General.¹⁴

From 1934 to 1938 the Advisory Committee of Experts on Slavery (for which the League Mandate Section supplied the secretariat) was the League's technical body to which the Secretary General referred all data furnished by governments on the slave trade, both in respect of mandated and all other territories. The Committee reported to and advised the Council. Its last report to the Council, a document of 130 printed pages, shows how extensive was the information available to the League on conditions in all parts of the world. The Committee was able to report:

In Africa, the age-long home of most of the slaves of the world, there is no reason for any disquietude concerning any of the colonies of the European Powers. In most of them, slavery in any form has now ceased to exist: in some, it lingers on, without legal status, as a social tie. Even as such, it is dying rapidly and painlessly.¹⁵

The result in Africa, and what was accomplished in other areas, proved noteworthy. It was made possible, not by the League mandate system as such, but because the League, starting from an inadequate foothold in the general Covenant (though it had a firmer one in a few of the mandates), knew how to take advantage of the strong humanitarian support

¹⁴ E.g., *Agenda of the Eleventh Ordinary Session of the Assembly and Supplementary List of Items*, L.N. Document A.2(1).1930, item 8(b).

¹⁵ *Slavery; Report of the Advisory Committee of Experts, Fifth (Extraordinary) Session of the Committee Held in Geneva, March 31st to April 5th, 1938* (Geneva, 1938), L.N. Document C.112.M.98.1938.VI., p. 9.

on this issue, as well as how to make full use of the provisions of a regional African treaty.

4. THE LIQUOR TRAFFIC

Article 22 provided in the case of "B" and "C" mandates for "prohibition of abuses such as . . . the liquor traffic." There is no other reference to the matter in the Covenant. The texts of the mandates were, however, contradictory. The "C" texts followed the Covenant and stipulated: "The supply of intoxicating spirits and beverages to the natives shall be prohibited"; while the "B" texts merely read: "The Mandatory . . . shall exercise a strict control over . . . the sale of spirituous liquors." The divergence was never removed, though the attention of the League Council was drawn by the rapporteur, even before the mandates were confirmed, to the obscurity of the references to liquor in the different texts. In the one case the phrase used was "intoxicating spirits and beverages"; in the other "spirituous liquors" (which was also the phrase used in the St. Germain convention). Moreover, the "C" mandates referred to "the natives," and the "B" did not; the implication in the case of "C" being that supply to non-natives might be permitted, while "B" seemed to leave open the possibility of supply to both natives and non-natives provided control over sale was "strict."

In the background, as a partial guide, lay the detailed provisions of the St. Germain convention of 1919 relating to the liquor traffic in Africa.¹⁶ By this convention "the importation, distribution, sale and possession of trade spirits of every kind, and of beverages mixed with these spirits" were forbidden throughout Africa, with the exception of Algeria, Tunis, Morocco, Libya, Egypt, and the Union of South Africa. The prohibition thus extended to all the African mandated territories. But what were "trade spirits"? Definition was left to the parties, which "will endeavor to establish a nomenclature and measures against fraud as uniform as possible" (Article 2). Under the convention distilled liquors, other than cheap trade spirits and those mixed with injurious chemicals, could be imported into parts of the prohibited area where their use had already spread (i.e., coastal areas) but they were subjected to duties so high as to be prohibitive for natives.

The reference to closed areas where the use of distilled liquor had not spread, i.e., to inland and Moslem areas, goes back to the Brussels Act

¹⁶ See above, section 3.

of 1890, which prohibited import of liquor into such areas—prohibitions which are still enforced over a large part of the interior of Africa.¹⁷ In 1919 the prohibition zones (which are shown on a map annexed to the minutes of the third session of the Mandates Commission) covered an area of 2,782,400 miles with 38,227,000 population.¹⁸

The convention went on to prohibit (except in the Italian colonies) the *manufacture* of distilled liquors and apparatus such as stills used therefor (Article 5).

Of the signatories to the liquor convention, Belgium and the British Commonwealth ratified in 1920; France in 1921; Japan and Portugal in 1922; the United States in 1929; and Italy in 1930; (Egypt adhered in 1924). Of these, Britain, the Union of South Africa, Belgium, and France, were mandatories.

Past experience had demonstrated conclusively the need for close international cooperation to make workable a convention framed in such general terms as this which left so much to the judgment of the parties. Cooperation and agreement on working definitions and standards was needed at many points, e.g., "uniform nomenclature," and "uniform measures against fraud" (especially smuggling), determination of limits of areas of total prohibition, uniformity of customs duties, nature of statistics, and annual reports. Since prohibition in the interior depended on strict control at all ports, which were situated in non-prohibition areas, the need of collaboration on this point, as well as of some uniformity in duties, was self-evident. The necessary coordination between the parties might have been undertaken by the League. It had a foothold in the convention, which by Article 7 placed under its control the Central International Office and provided it with statistical returns and an annual report. But the League seems to have shown no interest in doing anything beyond applying the convention in the African mandated territories. The long-delayed ratification by the United States seemed hardly sufficient reason for this attitude.¹⁹ The reluctance of the League to attempt

¹⁷ *Bea*, *op. cit.*, pp. 173-78, 221-29.

¹⁸ P.M. *Min.* (1923), p. 261. See also H. A. Wyndham, "The Problem of the West African Liquor Traffic," *Journal of the Royal Institute of International Affairs*, Vol. 9 (1930), pp. 801-18. He gives the non-prohibition zones (for which minimum import and excise duties are set) as 5,370,700 square miles, with 52,420,000 population.

¹⁹ Sir Alfred Zimmern points out (*op. cit.*, pp. 305-6) that Article 24 of the Covenant, placing international bureaus under the League, fell to the ground because of the defection of the United States; since the article required the consent of the parties to the treaty setting up each bureau. This general situation probably

any general regulation of liquor (which has been mentioned above), hardly explains inaction in a case such as this where a convention actually charged the League with certain functions. For this was a multi-lateral convention, of considerable importance to the African continent, which was already in force as regards the principal "colonial" powers in Africa as early as 1922, and which was clearly drafted upon the assumption that the League would play a definite rôle in its operation.

Thus the Mandates Commission was left with the difficult task of making liquor regulations work in the mandates when success depended on the cooperation of a number of other territories, whether adjoining or not, which were completely outside its jurisdiction. At most it could point mildly to difficulties caused in the mandated areas by the situation in other territories, e.g., the absence of sufficient uniformity of law in the latter.²⁰

The aims which the Commission set itself for the territories under its supervision were, as Wyndham indicated in the article cited, (1) to equalize import duties by leveling them up to the maximum in any adjoining territory; (2) to secure the fullest possible statistical returns; (3) to secure agreed definitions and a common nomenclature. The St. Germain convention contained provisions for securing uniformity in such matters; "but the only effective progress made towards this goal," Wyndham pointed out, "has been due to the Permanent Mandates Commission" in the mandated territories. The Commission was the only part of the League actually using the Central International Office. The League Council, instead of setting up the office as a League body, had continued the old Brussels Office, which under an arrangement accepted by the Permanent Mandates Commission at its tenth session sent data annually to the Commission. "But," according to Wyndham, writing in 1930, "very little attention was paid to it [the Office]. The British Government appears to be the only one that has sent it regular annual reports. . . ." The returns which the Office collected and forwarded to the Mandates Commission were difficult to use on any comparative basis since they included every possible variety of nomenclature and standard.²¹

influenced the League in its reluctance to assume the functions assigned expressly to it in the liquor traffic convention.

Probably for the same reason the Slavery Convention of 1926 limited the functions of the League to circulation of laws and regulations, and made no attempt to give it the functions of the Central Office created by the Brussels Act of 1890.

²⁰ P.M.C. Min. X (1926), pp. 179-80.

²¹ This was shown in the summary published by the Secretariat: *Mandates; Liquor Traffic in Territories under B and C Mandates; Statistics: Summary of*

In the discussion on the paper by Wyndham referred to above, Lord Lugard pointed out that although the conventions had been signed ten years previously, it was only in 1929 that the Commission had succeeded in securing agreed definitions. But it had not yet succeeded in getting duties equalized, much less leveled up to the highest. "Nor have we succeeded in obtaining regular annual returns in a comparable form, or in establishing a common nomenclature." This matter of definitions had dragged on since 1922, passing backwards and forwards between Assembly, Council, governments, and Mandates Commission. Finally, at its tenth session in 1926, the Commission was able to propose to the governments through the Council a series of definitions.²² As regards the terms used in the mandates, it defined "spirituous liquors" as:

- (a) All distilled beverages,
- (b) All fermented beverages to which distilled products have been added so as to contain over 20 degrees of pure alcohol by weight.

The term "intoxicating beverages" used in the "C" mandates was defined as "any beverage containing more than 3 degrees of pure alcohol by weight." The Commission went so far as to define the term "trade spirits" of the St. Germain treaty. These are "cheap spirits utilized as articles of trade or barter with the natives." After a series of further exchanges between Council, governments, Assembly, and Commission, these definitions were finally accepted by the governments. Even this was not regarded by the Commission as enough to establish a rule. For, as it reminded the Council, "the final decision of the Council" was needed to establish a "common basis for comparison."²³ This decision was given finally by the Council on March 4, 1929, and was an interesting example of the rôle of the Council as a rule-making body.

From 1922 to 1929 the Council and the Assembly freely aided the Commission in its work in this sphere, and on a number of occasions these bodies themselves intervened to give a lead to the governments and to give directions to the Commission. Thus, resolutions by the Council and Assembly asking the Commission to investigate the reasons

Legislative Measures and Miscellaneous Information (Geneva, 1930), L.N. Document C.608.M.235.1930.VI. The Brussels Office survived unnoticed throughout both world wars. A report adopted by the Supreme Council on September 9, 1919, stated that the Brussels Office had functioned satisfactorily and there was no good reason for shifting it. *For. Rel. U. S., Paris Peace Conference, 1919*, Vol. VIII, pp. 160-71.

²² P.M.C. Min. X (1926), pp. 181-82.

²³ P.M.C. Min. XIV (1928), p. 269.

for the increase of the liquor traffic in some of the "B" mandates were considered by the Commission at its fourteenth session.²⁴

As a means of putting a stop to smuggling, which was the main cause of this situation, the Commission placed at the head of its report to the Council on its fourteenth session recommendations for (1) uniform laws and regulations by the governments of France and Great Britain on import duties and the leveling up of the actual rates of duty (a matter on which it had made a similar recommendation as far back as 1923); (2) the strengthening of the regulations for the prohibition of the sale of spirits except under licence; (3) the imposition of railway rates on the carriage of spirits on a sharply ascending scale; (4) the strict observance of the absolute prohibition of the manufacture, sale, or possession of spirits by natives in zones of prohibition laid down by the St. Germain convention of 1919.

It was the Mandates Commission which throughout the whole period was the really active and effective part of the League machinery in securing whatever results were secured in the matter of the liquor trade. Beginning at its second session, it followed up patiently year by year different aspects of the problem. Thus, its recommendations at the fourteenth session regarding the absolute prohibition of manufacture by the natives was followed up at the twenty-sixth session in 1934, and the thirty-fourth session in 1937, when it drew attention to the continued existence of illegal distillation in various territories as indicated in the annual reports of the mandatory powers. Its activity and versatility were shown in the different rôles it fulfilled in this field—such as judicial interpretation; legislating by means of rules and definitions; devising step by step the elements of a model administrative code; and supervising a multilateral convention in at least the mandated part of the region to which it applied. Thus, at its thirteenth session it called on the parties to the St. Germain convention for information as to its application in the mandated territories under their control; and, as we have seen, it aided them in carrying out their obligations of endeavoring "to establish a nomenclature and measures against fraud as uniform as possible." Its

²⁴ *Ibid.*, pp. 268-69 (Report to the Council on the Work of the Fourteenth Session). The Assembly resolution was dated September 23, 1927, and that of the Council December 6. The latter read: "The Council requests the Permanent Mandates Commission in collaboration with the mandatory Powers, to continue to give serious consideration to the causes of the increased importation of spirituous liquors into those territories under B Mandate where such an increase is taking place, and to the steps to remedy this situation."

activity in making the convention work in the mandated territories was a challenge to the governments to be not less active in their own African dependencies.

The work of the Commission in connection with liquor recalls the rôle carried out by the specialized dangerous-drugs bodies of the League which dealt with a problem with some analogies to the liquor traffic. But these bodies were armed with far more drastic international laws and controls—the most advanced, indeed, of their kind that had ever existed in the international sphere—which provided in all dependent territories an enforcement not less exacting than that in the League mandates. The Mandates Commission had to work in the matter of the liquor traffic on a much weaker legislative foundation. It received only the minimum assistance from the League Council and Assembly. And so it may be said to have left off in 1939 about where the Opium Advisory Committee of the League began in 1921. The latter, it must be remembered, was a specialized body with a single interest, and nothing like the multiplicity of functions of the territorial Mandates Commission. The universality of the dangerous-drugs machinery was impracticable and unattainable in the case of liquor. It is at least possible, however, that a functional body such as the St. Germain convention seemed to envisage, dealing only with the liquor traffic for the whole of Africa, could have done a better job than the Mandates Commission was able to do, and could have done it for all Africa, including the mandates.

5. THE OPEN DOOR

The great activity shown by the Mandates Commission in this sphere has been noted above.²⁸ The results of this activity, especially as regards the mandated territories in Africa, are difficult to assess, but appear to have been of some importance. Yet the importance can be exaggerated, as the trade involved in the mandated areas was a fraction of a fraction. Thus the shares of all Africa south of the Sahara in the world's export and import trade in 1929 were about the same as those of Oceania, namely 2.8 per cent and 2.6 per cent respectively. In a few foodstuffs—especially palm kernel oil and cocoa—the contribution of Africa was very high. And some of her minerals and raw materials were of high strategic importance in the war. In non-agricultural products the share of

²⁸ See above, Part I, Chapter VI, section 1.

Africa as a whole in the years 1925-29 was only one per cent of the world production.²⁶

Though the mandatories were not legally obliged to apply in the "C" mandates the principles of economic equality, in practice they did so. Any remarks by the Commission drawing attention to a departure from the principle were heeded by the governments. A question under the heading "Economic Equality" about the extension of the Navigation Act to New Guinea, which would thereby in practice restrict shipping to Australian bottoms, led to a hurried repeal of the clause so that the minutes of the Commission containing the remark and the Australian Government's telegraphic reply indicating repeal were both circulated to the Assembly almost together.²⁷

It is doubtful, as we have already noted, whether all the activity of the Commission in the six "B" mandates had much real effect on the enforcement of the open door in the Conventional Basin of the Congo as a whole. The Commission could do little about the larger economic forces affecting the African continent; and in retrospect its preoccupation with the multitude of small points involved in the enforcement of the open-door principle looks somewhat negative and unimpressive. The principle laid down by the Commission in 1925, that no profit should be made by the mandatory out of the territory entrusted to it, was no doubt salutary. The Commission welcomed the giving of privileges by the mandatory (e.g., extending to the territory preferential tariff rights in the markets of the mandatory power or of its colonies, or lower postal rates) but no compensation could be taken by the mandatory for these concessions to its ward.

Historically, the open-door system of the Berlin and Brussels Acts and of Article 22 were relics of the nineteenth-century *laissez-faire* thinking and policy that imposed the unequal treaties on China. The open door was concerned primarily with the interests of the powers: equality of trade access, and equality in concessions and in the matter of exploiting African resources, meant equality as between the trading nations, without much if any reference to the impact of their trading activities on native life and society in Africa. The assumption was that the coming

²⁶ Hailey, *op. cit.*, pp. 1324-25. Based on the figures of the League's Economic and Financial Section.

²⁷ P.M.C. Min., VI (1925), p. 180. The Australian reply on September 12, 1925, is in *Mandates: Communication from the Australian Government regarding the Administration of New Guinea (Application of Australian Navigation Act)*, Geneva, 1925, L.N. Document A.64.1925.VI. The reply asked expressly for the same circulation as had been given to the Minutes of the Commission.

of foreign traders and entrepreneurs, and of foreign merchandise, was a good in itself. Even aggressor nations were permitted to continue to exploit the resources of the League mandates and to trade freely on an equal footing with League members, though the Covenant and the mandate texts reserved this right to member states.²⁸

The Mandates Commission on many occasions expressed its concern lest the natives might not be getting a fair share in the greater prosperity arising from the increased foreign trade of the different territories.²⁹ It also showed a continuous interest each year, in relation to each territory, in the economic activities of the natives. But development by the natives, or by the local government aided by the natives, of economic activities even in relation to agriculture, was hindered by a too rigid open-door policy. Hence the recognition in the United Nations Charter (Article 76) that commercial equality must be "without prejudice" to native interests.

6. INTERNATIONAL LABOR LEGISLATION

The one case in which a functional League body dealing with a group of questions for the whole world was permanently represented on the Permanent Mandates Commission (itself a territorial body responsible for supervising governments in relationship to particular territories) was the International Labor Organization (ILO). When the Mandates Commission was set up the Director of the International Labor Office requested ILO membership on the Commission in virtue of the functions conferred on the ILO under Articles 421 and 427 of the Treaty of Versailles, as well as Articles 22 and 23(a) of the League Covenant. The Council inserted a clause in the constitution of the Commission whereby an expert chosen by the ILO should have the right of attending in "an advisory capacity all meetings of the Permanent Commission at which questions relating to labour are discussed." While Article 22 did not refer directly to labor matters, the text of the "B" and "C" mandates make an explicit reference. Thus the "B" mandates provided: "The Mandatory . . . (3) shall prohibit all forms of forced or compulsory

²⁸ Statement made by the accredited representative of the British Government and other mandatory powers at the thirty-first session. P.M.C. *Min* XXXI (1937), p. 67.

²⁹ As Lord Hailey pointed out, this meant that the 60 per cent of their total imports which the mandates drew from non-member states would continue to have full open-door privileges.

³⁰ League of Nations, *The Mandates System*, *op. cit.*, pp. 65-66.

labour, except for essential public works and services, and then only in return for adequate remuneration; (4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour"; the "C" mandates repeated (3) but omitted (4).

Under Article 421 of the Treaty of Versailles (Article 35 of the ILO constitution) the members of the ILO undertook to apply conventions "to their colonies, protectorates and possessions which are not fully self-governing . . . [with] such modifications as may be necessary to adapt the convention to local conditions," and to notify the International Labor Office of the action taken in respect of each of such dependencies.

The foothold thus given to the International Labor Office, in the treaty, in the Mandates Commission, and in the texts of the mandates (with their very specific references to forced labor, labor contracts, and the recruitment of labor) enabled the Office to develop an extensive activity in relation not merely to the mandated territories, but also to dependent areas in general. By a decision of the International Labor Conference of 1926, the Governing Body set up in 1927 a Native Labor Committee on which were four members of the Permanent Mandates Commission who played an active part in its work. Attention was concentrated on two questions: forced labor and long-term contracts. A draft convention on forced labor was drawn up which the Conference adopted in 1930. Three other conventions applying particularly to dependencies followed: Recruiting of Indigenous Workers Convention, 1936; Penal Sanctions (Indigenous Workers) Convention, 1939; Contracts of Employment (Indigenous Workers) Convention, 1939.⁸⁰

This body of international legislation aimed at extending to dependencies in general safeguards first given international recognition in the provisions of the League mandates. Except for that on forced labor, these conventions have not yet been widely ratified. But the importance of the innovations which the mandates introduced in this sphere in colonial theory and practice is already evident. There were of course other general ILO conventions which have had some application to dependent areas, especially those regulating the employment of women and children

⁸⁰ For the texts of all these conventions, see International Labour Office, *The International Labour Code, 1939: A Systematic Arrangement of the Conventions and Recommendations Adopted by the International Labour Conference, 1919-1939, With Appendices Embodying Other Standards of Social Policy Framed by the International Labour Organisation, 1919-1939* (Montreal, 1941), pp. 476-514.

and providing for the simpler forms of minimum-wage regulating machinery. The ILO Summary of Annual Reports on the application of conventions noted in 1939 the gradual application of the general ILO conventions to dependent territories.³¹

The generalization of these provisions did not eliminate the work of the Mandates Commission on the subjects covered by them. The Commission remained very active on these and other questions affecting labor. The ILO, through membership on the Commission in an advisory capacity, was able to do what it could hardly do anywhere else, namely, participate in the supervision of its own conventions in particular territories with the right of questioning the accredited representatives of the mandatory powers. In Lord Hailey's expert judgment, "there is . . . a difference observable between the degree of supervision exercised over the use of this type of labour [forced labor] in the mandated areas and that seen in some of the other African territories."³² On the other hand, as he observed, all the advances were not in the mandated areas, since portage was abolished in Gambia and the Gold Coast but only restricted by law in Tanganyika.

A classical case which illustrates admirably the method of the Mandates Commission (with the ILO representative in the lead) was that of the Central Railway in the French Cameroons. The railway was begun in 1922 and finished in 1927. It occupied the Commission at every session from 1924—when its attention was first drawn to the matter in the annual report of the mandatory for 1922—up to the year 1929. The discussion was carried on year by year through the usual laborious means of the annual report of the mandatory, questions and discussion on it with the help of the accredited representative, and pressure exerted through the League Council by asking for further data and by drawing the Council's attention to the facts. The issue turned round the conditions of the labor compulsorily recruited for the task, the heavy mortality, and the absence of adequate medical assistance. In the end the railway was finished. It led to a great reduction in portage, which was described by the Commissioner of the French Republic in the Cameroons, as "the scourge of Tropical Africa." The 1929 Annual Report quoted

³¹ See International Labour Conference, Twenty-Sixth Session, Report V: *Minimum Standards of Social Policy in Dependent Territories*, Fifth Item on the Agenda (Montreal: International Labour Office, 1944), pp. 20-21. See also footnote 40, below, this chapter.

³² Hailey, *African Survey*, *op. cit.*, p. 629.

the administrator as reassuring the natives that "no new railroad construction would be undertaken for a period of at least ten years."⁸³

A further example of the part played by the ILO in the regular work of the Commission is afforded by the discussion in the session from 1936 to 1938 on wages and wage conditions in the British and French Cameroons. An official of the International Labor Office, who had visited the Cameroons in 1935, reported the existence on plantations in the British and French Cameroons of a system of partial payment of wages whereby credit was given for goods to be bought in company stores, which in practice amounted to a truck system. This led to a question on the part of the ILO representative in 1936, a reference to the matter in the next British annual report (for 1936), and the promise of a further enquiry to be made in 1937, the results of which were duly reported in the annual report for that year. Under the conditions prevailing in the plantations, the report declared, the practice was not resulting in abuse though it needed watching. In the annual report for 1938⁸⁴ the mandatory again reverted to the matter. The report gave details of wage conditions and concluded: "The position recorded . . . is in some respects susceptible of improvement. . . ." It went on to make the important announcement that a senior labor officer had been appointed to examine conditions in both Nigeria and the colonies under British mandate. After a briefing in England on labor legislation, he would return to make a thorough investigation and to report on conditions in the Cameroons' plantations. He would also be concerned with the application of the new Trade Union Ordinance (No. 44 of 1938). Thus, discussion of a particular labor matter in a mandated area had eventually led to administrative action dealing with a wide range of labor questions affecting important non-mandated areas as well as the mandate.

After December, 1939, the Mandates Commission became inactive and could no longer serve as a forum for the ILO. Towards the end of the war the latter, however, resumed its activity in respect of dependencies on a far bolder scale than in the past. The Philadelphia Conference of

⁸³ This and the truck case summarized below are given in full detail in Robert R. Kuczynski, *The Cameroons and Togoland; A Demographic Study* (London, etc.: Oxford University Press, 1939. Issued under the auspices of the Royal Institute of International Affairs).

⁸⁴ Great Britain, Colonial Office, *Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the Administration of the Cameroons under British Mandate for the year 1938*, op. cit., pp. 70-73.

the ILO in May, 1944, passed a resolution³⁵ recommending the application by the United Nations of the provisions of the forced labor convention and the other conventions referred to above in any new or old trust territories, and the making of a periodical report to the International Labor Office on the effect given to the far-reaching provisions of the Social Policy (Dependent Territories) Recommendation, 1944, which was one of the principal achievements of the Conference. The Conference went on to recommend further that the United Nations should assure the representation of the ILO on any new trusteeship body to be set up to replace the Permanent Mandates Commission. It added the important proposal that any facilities in the matter of inspection or otherwise providing for the implementation of the trusteeship system should apply to the four conventions and the Social Policy Recommendation. The draft agreements reached in 1946 between the ILO, the Food and Agriculture Organization (FAO), and the United Nations Educational, Social, and

³⁵ The text was as follows :

"3. The Conference recommends that :

1. The United Nations should undertake—

- (a) to apply to any dependent territories, in respect of which they have accepted or may accept a measure of international accountability through any international or regional commission or other body, the principle that all policies designed to apply to dependent territories shall be primarily directed to the well-being and development of the peoples of such territories, and to the promotion of the desire on their part for social progress;
- (b) to apply to such territories the provisions of the Forced Labour Convention, 1930; the Recruiting of Indigenous Workers Convention, 1936; the Contracts of Employment (Indigenous Workers) Convention, 1939; and the Penal Sanctions (Indigenous Workers) Convention, 1939;
- (c) to make a periodical report to the International Labour Office in respect of each such territory indicating the extent to which effect has been given to the provisions of the Social Policy (Dependent Territories) Recommendation, 1944;
- (d) to ask the International Labour Office to appoint, in continuation of the collaboration established in the case of the Permanent Mandates Commission, a representative on any committee which may be entrusted with the task of watching over the application of the principle of international accountability, and further to ensure that any facilities which may be afforded, in the form of inspection or otherwise, for the better implementation of this principle, shall include appropriate measures for examining the application of the above-mentioned Conventions and Recommendation.

2. When determining the future status of dependent territories which on 1 September 1939 were controlled by Axis Powers, the United Nations should specifically require the application thereto of the arrangements provided for in the preceding paragraph." International Labour Conference, Twenty-Sixth Session, Philadelphia, 1944, *Record of Proceedings* (ILO: International Labour Office, 1944), pp. 503-24; U. S. Department of State, *Bulletin*, June 3, 1944, p. 516.

Cultural Organization (UNESCO) provided for coordination in exchange of information and in the matter of reciprocal representation, both in relation to trust territories and to non-self-governing territories.

The Social Policy Recommendation with its annex includes some fifty detailed provisions constituting the "Minimum Standards of Social Policy in Dependent Territories."⁸⁶ The standards are in effect a codification of many provisions of special or general League or ILO agreements or conventions that might reasonably be applied by enlightened governments to dependent peoples under their care—including, apart from the subjects of the four special ILO conventions, such matters as slavery, opium, employment of women and children, wages, health, housing and social security, prohibition of discriminations, industrial and cooperative organization, and inspection.⁸⁷ This recommendation was described by Mr. Wilfrid Benson, Chief of the Dependent Territories Service of the International Labor Office, in the following terms: "In constitutional form it is the most advanced and in substance it is one of the most important texts of this nature that has ever been adopted internationally."⁸⁸ Being a recommendation carried by a two-thirds majority of votes, it is a formal decision of the Conference, and member states are under a formal treaty obligation to submit it to the competent authority concerned—parliament or otherwise. Only time will show how far the wide range of subjects covered by the recommendation will in practice be dealt with by the ILO and how far they will be regarded as falling within the direct competence of United Nations bodies such as the Economic and Social Council, the Trusteeship Council, or other of the specialized agencies set up under the Charter.

The International Labor Conference in Paris in 1945 adopted a supplementary Recommendation on Social Policy in Dependent Territories.⁸⁹ It also placed on the agenda for the following session of the Conference the question of the adoption of an international labor con-

⁸⁶ For the text of the recommendation, see International Labour Conference, Twenty-Sixth Session, *Record of Proceedings*, pp. 585-602.

⁸⁷ The draft proposals as submitted by the International Labor Office went still further and included, for example, provisions relating to land and to hours and holidays. For the commentary by the Office on the provisions of the recommendation, see its Report V: *Minimum Standards of Social Policy in Dependent Territories*, *op. cit.*

⁸⁸ "An I.L.O. Pattern for Pacific Territories," *Pacific Affairs*, Vol. XVII (1944), p. 315.

⁸⁹ International Labour Conference, Twenty-Seventh Session, 1945, Report V: *Minimum Standards of Social Policy in Dependent Territories (Supplementary Provisions)*, Fifth Item on the Agenda (Montreal: International Labour Office, 1945), pp. 99-109.

vention on the basis of the Philadelphia and Paris recommendations. The subject was discussed in the next general session of the Conference held in Montreal in 1946; and draft conventions drawn up by the International Labor Office on the basis of the conclusions of the Conference will be considered by the 1947 session.⁴⁰

⁴⁰ See International Labour Conference, Thirtieth Session, Geneva, 1947, Report III (1): *Non-Metropolitan Territories*, Third Item on the Agenda (Montreal: International Labour Office, 1946). The report contains the drafts of the five new conventions, which deal with (1) Social Policy in Non-Metropolitan Territories; (2) The Right of Association and the Settlement of Labour Disputes in Non-Metropolitan Territories; (3) Labour Inspectorates in Non-Metropolitan Territories; (4) Application of International Labour Standards to Non-Metropolitan Territories; (5) Maximum Length of Contracts of Employment of Indigenous Workers *Ibid*, pp 85-119.

Five conventions based on these drafts were adopted by the Conference at its thirtieth session. The convention on the application of international labor standards to dependent territories covers twelve conventions adopted at previous International Labor Conferences having special application to these territories. Its purpose is to secure wider application of the following conventions: Minimum Age (Industry), Minimum Age (Sea), Minimum Age (Trimmers and Stokers), Medical Examination of Young Persons (Industry), Medical Examination of Young Persons (Sea), Maternity Protection, Night Work of Young Persons (Industry), Night Work (Women), Equality of Treatment (Accident Compensation), Workmen's Compensation (Accidents), Marking of Weight (Packages Transported by Vessels), and Weekly Rest (Industry). *I.L.O. News Service* (International Labor Office, Montreal, Canada), No. 23, September, 1947.

PART IV

THE END OF MANDATES AND THE BEGINNING OF INTERNATIONAL TRUSTEESHIP

CHAPTER XVI

THE WAR AND THE WINDING-UP OF THE MANDATE SYSTEM

I. MANDATES INVOLVED IN THE BELLIGERENCY OF THE MANDATORY

War in 1939 involved all the mandates in the belligerency imposed on the mandatory powers by the aggression of Germany. The inclusion of the mandates in League sanctions against Italy three years earlier had been a prelude. The Committee of Experts then appointed by the Committee of Eighteen to examine the application of sanctions noted that the measures taken by governments extended to all colonies, protectorates, dependencies, condominiums, leased territories, and mandated territories.¹ This was in accordance with the express desire of virtually all League members and of the United States. The discussion on sanctions in the Mandates Commission in June and October, 1936, was inconclusive. Most of the members refused to accept the view of the Italian chairman, that mandates "being an international system of a special character," should not be involved in sanctions.

When faced, in 1939, with the fact of war, the Mandates Commission, busy at its last session in December, 1939, with the annual reports of 1938, "deliberately refrained," as it put it, "from anticipating the events of 1939." There were scattered enquiries directed to the accredited representatives, mostly by Baron van Asbeck, centering round the legal question whether a mandated territory should be involved in the belligerency of the mandatory. "Lord Hailey asked whether there was any doubt from the legal point of view as to the propriety of considering that the mandated territories were in a state of belligerency." If there were any doubt, he said, "should the Commission wait a year before dealing with such a situation?" "Everyone knew that the mandated territories

¹ Minutes of First Session, November 27-December 12, 1935. L.N., *Official Journal*, Special Supplement No. 147, pp. 5-28 (French text)

The replies of governments on the measures taken are in *ibid.*, Special Supplement No. 150 (1936), pp. 16-312. See also section on Sanctions, above, Part I, Chapter VII.

had been treated as involved in a state of belligerency." Professor Rappard, while admitting that the Commission "was very inadequately informed of what had happened," expressed the view that mandates were "not under the sovereignty of the belligerent Powers; the latter administered them in the name of the League of Nations, which was not at war."² The point was not relevant unless the League possessed sovereignty, a claim it had never advanced and which the mandatories had never admitted.³

The mandatories would no doubt subscribe (their practice being in line with it) to the following opinion from Oppenheim: ". . . the mandatory is entitled, subject to the fundamental principles of the régime of mandates as stated above, to extend to the mandated territories his relevant war legislation. . . ."⁴ The view that a mandate may be legally involved in the belligerency of the mandatory is confirmed by the recent publication of the Supreme Council's interpretation of the words "defence of territory" in Article 22 of the League Covenant. On December 9, 1919, the heads of delegations (United States, British Empire, France, Italy, and Japan) decided that, subject to United States approval, the words "defence of territory" in Article 22, and in the text of the "B" mandates, should be interpreted in the sense of permitting the military training of the natives for use for defence purposes outside the territory in the case of a general war. The interpretation was in general terms, and applied to all the "B" mandates; but it arose out of a discussion on the desire of France to have this right made clear. To make it doubly clear France obtained the insertion of an additional clause in her African mandates. After the clause, common to all the "B" texts, which permits the training of natives "for the defence of the territory," the following clause was inserted in the French mandate texts: "It is understood, however, that the troops thus raised may, in the event of general war, be utilised to repel an attack or for the defence of the terri-

² P.M.C. Min. XXXVII (1939), pp. 120-22.

³ The Acting Secretary General noted in his report for the years 1940 and 1941 (L.N. Document C 41.M.38.1941) that "the League of Nations was not invoked." But the French and British Governments (on September 5 and 9) had notified the League of the existence of a state of war caused by German aggression, cited the violation of the Pact of Paris, and referred to the action of the two governments as being "in conformity with the spirit of the Covenant." *Report on the Work of the League, July-Mid-November, 1939*, L.N. Document A 6(a). 1939.

⁴ Oppenheim, *International Law*, 6th edition, revised (Lauterpacht), 1944, Vol. II, p. 192. For a discussion of the question of automatic belligerency, see *ibid.*, pp. 191-92. This was written before the publication of the interpretation of the Supreme Council in 1919, cited below. See also above, Chapters VII, section 1, and IX, section 2, p. 116 (on French defense clause), and Note on "Mandates and Belligerency" in *British Year Book of International Law*, 1947.

tory outside that subject to the mandate." The Supreme Council was informed on January 10, 1920, of the approval of the United States Government of an interpretation of Article 22 in the sense of this clause.⁵

It seems clear from this that the understanding existed for all the "B" mandates, even though it was expressly written into the texts of only two of them. (An "understanding" of an article of the Covenant valid for one League member but not for another had always indeed seemed an anomaly.) Since the words "for defence of territory" were applied, in Article 22, also to the "C" mandates, the interpretation would seem to be valid also for them—all the more since the mandatory was empowered to administer a "C" mandate as an "integral portion" of his territory. The texts of the "C" mandates added the word "local" before "defence": "The military training of the natives, otherwise than for purposes of internal police and the *local* defence of the territory, shall be prohibited." But there was nothing in the word "local" which would have forbidden the use of native armed forces for defense outside the actual boundaries of the territory.

The practice followed in September, 1939, throws light on the question of automatic belligerency. The Director of the Mandates Section informed the Mandates Commission during its last meeting that the Secretariat had some official gazettes, e.g., for Tanganyika, indicating the measures taken on the outbreak of the war. Moreover, the annual report for South-West Africa for the year 1939, received by the League in 1940, left no doubt that the mandate had indeed gone to war, both *de facto* and *de jure*. "War measures" were outlined under more than a score of heads in paragraphs 134 and following of the report. They included trading with the enemy, censorship, and withdrawal of citizenship from Germans in the territory.⁶ The South African Defense Act of 1912 was applied by proclamation.

The documents available for Tanganyika afford a good illustration of the process by which the mandates were involved in belligerency. Jurisdiction was acquired, in the case of Tanganyika, by the Tanganyika Order in Council of July 22, 1920, made under the Foreign Jurisdiction Act of 1890. Section 1 of that act provided as follows:

1. It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner

⁵ For. Rels. U. S., Paris Peace Conference, 1919, Vol. IX, pp. 542-44 and 836. See above, pp. 68 and 150.

⁶ See above, Part I, Chapter VII, section 2(c).

as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.

War between His Majesty and Germany involved the territories under His Majesty's jurisdiction, including the mandated territories. In the procedure followed at the outbreak of the war no difference was made between colonies, protectorates, and mandated territories. Thus, the circular telegram sent by the Colonial Office on September 3, 1939, announcing the existence of a state of war with Germany, was addressed to all colonies, protectorates, protected states, and mandated territories. All these territories had received specimen legislation drawn up in advance in case of the emergency of war. The Emergency Powers (Defense) Act of 1939, passed on August 24 in the United Kingdom, empowered the government to make defense regulations in respect of the United Kingdom. It provided further that "His Majesty may by Order in Council direct that the provisions of this Act . . . shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order" to overseas territories, including "any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom." Next day, August 25, the Emergency Powers (Colonial Defense) Order in Council, 1939, was issued under the Act. It extended the provisions of the Act to overseas territories, including those under United Kingdom mandate.⁷ Under this Order in Council the governors of the mandated territories and the High Commissioner for Palestine had the same power as the United Kingdom Government to make local defense regulations. (The regulations made in the United Kingdom did not, of course, apply in the overseas territories.) In addition to this power of legislation by defense regulation, the local legislatures in mandated territories, as in colonies, could legislate by ordinance. This method was used, for example, to deal with trading with the enemy.

Trans-Jordan was an exception to this procedure. Since it was a territory under an independent sovereign, bound to the United Kingdom by treaty of alliance, and exercising its own jurisdiction, the Emergency Powers (Defense) Act was not applicable to it. Under the treaty of February, 1928 (following the general lines of the Iraq treaty), the

⁷ " . . . the Prize Law Act of 1939 was made applicable to the mandated territories administered by Great Britain, Australia, and New Zealand." Oppenheim, *op. cit.*, p. 192.

mandatory transferred full powers of legislation and administration to the Emir of Trans-Jordan and the local legislature, retaining only the right to offer advice and assistance. The war legislation of Trans-Jordan thus appears to have been made by the government of the territory under powers conferred by local statute.

2. THE WAR AND THE "A" MANDATES

The goal defined in the Covenant for the "A" mandates—existence as independent nations—following a provisional period of tutelage, was achieved by all the "A" mandates save one, though not in each case by the same road. Iraq, Syria, Lebanon, and Trans-Jordan reached the goal because these peoples had been able to convince the mandatory and the world that they had developed sufficient unity to agree among themselves on a national charter or constitution.

Palestine

The failure to satisfy this condition in Palestine left the mandatory with the burden of two ill-defined and unreconcilable obligations, one to each of the two contending national groups.⁸ Without an agreement between the two groups the obligations could not be fulfilled and the mandate brought to an end. The two powers principally interested in a permanent settlement, the mandatory and the United States, had both pledged themselves that no fundamental decisions should be taken "without prior consultation with both Arabs and Jews."⁹ The mandatory's policy on the future of the mandate, as put before Parliament by Mr. Bevin on November 13, 1945, was as follows: "His Majesty's Government cannot divest themselves of their duties and responsibilities under

⁸ On Palestine, see Great Britain, Palestine Royal Commission, *Report* (London, 1937), Cmd. 5479; *Great Britain and Palestine: 1915-1945* (London: Royal Institute of International Affairs, 1946); *Report of the Anglo-American Committee of Enquiry regarding the Problems of European Jewry and Palestine, Lausanne, 20th April 1946* (London, 1946), Cmd. 6808; Robert R. Nathan, Oscar Gass, Daniel Cramer, *Palestine: Problem and Promise; An Economic Study* (Washington: American Council on Public Affairs, 1946). The Report of the Anglo-American Committee of Inquiry of April 20, 1946, is also printed as U. S. Department of State Publication 2536, Near Eastern Series 2. See also reference to the Report of the United Nations Special Committee on Palestine, below, note 11a.

⁹ President Roosevelt's pledge of October 20, 1945, repeated by President Truman in his letter to King Ibn Saud, October 28, 1946 (U. S. Department of State, *Bulletin*, November 10, 1946); also the speech of the British Foreign Secretary, Mr. Bevin, in the House of Commons, November 13, 1945. The United States Government ordered the evacuation of all American troops from Palestine on October 12, 1945.

the Mandate while the Mandate continues . . . ,” that is, until arrangements could be made “for placing Palestine under trusteeship.” Following consultations with Jews and Arabs, he went on, and the receipt of the report of the Anglo-American Committee of Inquiry (appointed in November, 1945), the mandatory “will prepare a permanent solution for submission to the United Nations, and if possible, an agreed one.”¹⁰

The Committee of Inquiry reported on April 20, 1946.^{10a} But the discussions that followed between the mandatory, the Arabs, and the Zionists failed to produce any agreed solution.

On February 18, 1947, the Foreign Secretary informed Parliament of the government's decision to lay the matter before the General Assembly of the United Nations at its regular meeting in September. This would be done with an historical account of the discharge of the trust since the inception of the mandate, but without recommendations as to a settlement of the problem. “We shall explain,” he said, “that the mandate has proved to be unworkable in practice and that the obligations to the two communities in Palestine have been shown to be irreconcilable.”¹¹

At a special session of the General Assembly which met on April 28, 1947, a United Nations Special Committee on Palestine was appointed to make a preliminary study of the problem. The report of the Committee was published on September 3, 1947,^{11a} and considered by a special committee of the General Assembly. The British Government agreed, on September 26, with the recommendation that the mandate “should now be terminated,”^{11b} and set May 15, 1948, as the date of termination, and August, 1948, as the date for completion of the withdrawal of all its forces.^{11c}

In one sense the mandate—as a device to reconcile Arab and Jew—had failed. Its success from another point of view had been so much taken for granted as to be passed by almost without notice. The power and prestige of the mandatory between the wars, and through the Second World War, had kept intact this pivotal point on the world frontier; had

¹⁰ *Parliamentary Debates* (Hansard), House of Commons, Vol. 415, col. 1931.

^{10a} See note 8, above.

¹¹ *Ibid.*, Vol. 433, No. 50, cols. 992-93.

^{11a} U.N. Document A/364.

^{11b} U.N. Document A/AC/14/SR.2.

^{11c} On November 25, 1947, the General Assembly adopted a plan for the partition of Palestine (U.N. Document A/516), which was accepted by the Jews but not by the Arabs. In the meantime the flames of civil war mounted in Palestine. In March, 1948, the United States proposed to replace the Partition Plan by a United Nations trusteeship for the whole of Palestine. As this book goes to press no acceptable solution is in sight.

given it the stability necessary to build it up; had afforded to the Jewish people their only territorial foothold in the world, while safeguarding the interests of the Arabs; and had kept Palestine, as well as Syria and Iraq, out of the hands of the totalitarian regimes and within the frontier of democracy and freedom. At the moment when the Palestine issue came before the United Nations these principles were powerfully reinforced in the Middle East by the new American aid to Greece and Turkey. But there was still a lack of belief in the Middle East that so far as Palestine was concerned, the United States would back its words and desires by its armed force.

*Syria*¹²

An Allied force, consisting of Free French and British Commonwealth troops, entered Syria and Lebanon on June 8, 1941, and took over the territory after a campaign lasting a month. In simultaneous Free French and British proclamations, issued that day, the peoples of Syria and Lebanon were declared "from henceforth sovereign and independent peoples." The French proclamation announced that their "independent and sovereign status" would be guaranteed by a treaty defining the mutual relations between them and France. General Catroux proclaimed the independence of Syria as a sovereign state on September 28, and of Lebanon on November 26. British recognition was accorded to Syria on October 27, and to Lebanon on December 26, 1941. War conditions and the difficulties that stood in the way of negotiating a treaty between France and the new states slowed up the establishment of constitutional rule. The French view was that legally the mandate still held, that neither France nor the new states could end its obligations except by a legal process through the League of Nations or its successor, and that the Iraq precedent of a treaty, as worked out by the League and the Mandates Commission, was the proper method of termination of the mandate. The view of Syria and Lebanon was that the mandate had ceased to exist—at least *de facto*—with the declaration of independence made in 1941, and that a treaty of friendship and alliance with France was not necessary. In October, 1943, the Lebanese government and parliament eliminated all references to the mandatory

¹² A. H. Hourani, *Syria and Lebanon; A Political Essay* (Issued under the auspices of the Royal Institute of International Affairs, London, New York, etc.: Oxford University Press, 1946) gives all the recent documents, against a luminous analysis of the background.

power and the League of Nations from the constitution. Meanwhile, the new states began to receive unconditional recognition by an increasing number of powers: by the Arab states in the fall of 1943, by the U.S.S.R. in July, 1944, and by the United States of America in September, 1944.¹³ In February, 1945, Syria and Lebanon declared war against Germany and Japan. After signing the Declaration of the United Nations they were invited on March 29, 1945, by the United States and the other sponsor powers to the San Francisco Conference. On December 13, 1945, an agreement was signed between Britain and France providing for the evacuation of their troops from Syria and Lebanon.

Thus, the Syrian mandate may be said to have been terminated without any formal action on the part of the League or its successor. The mandate was terminated by the declaration of the mandatory power, and of the new states themselves, of their independence, followed by a process of piecemeal unconditional recognition by other powers, culminating in formal admission to the United Nations. Article 78 of the Charter ended the status of tutelage for any member state: "The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality."

Trans-Jordan

Trans-Jordan might be regarded as one of the territories "now held under mandate," in the words of Article 77 of the Charter. But the mandate ended in independence before the trusteeship system was in effect.

The treaty of "friendship and alliance" between the United Kingdom and Trans-Jordan of March 22, 1946, terminated the mandate by the formal recognition by the mandatory power of Trans-Jordan as a "fully independent state."¹⁴ The intention of the mandatory to take this step had been announced by the British Foreign Secretary at the General Assembly of the United Nations on January 17, 1946, and the step was welcomed unanimously in a formal resolution by the Assembly on February 9. The preamble of the Trans-Jordan treaty cited this resolution. The League of Nations Assembly in April, which was aware of the text of the treaty, unanimously passed a resolution (on April 18)

¹³ U. S. Department of State, *Bulletin*, September 24, 1944, p. 313.

¹⁴ Cmd. 6779 (1946). For text, see below, Annex XI.

welcoming the termination of the mandated status of Syria, the Lebanon, and Trans-Jordan, "which have . . . become independent members of the world community." The treaty itself did not mention the League; but it followed the general lines of the Iraq treaty which had been worked out in full consultation with and approved by the Mandates Commission and the League.

The Trans-Jordan treaty provided (Article 8) that all obligations and responsibilities devolving on the United Kingdom "in respect of any international instrument which is not legally terminated should devolve on His Highness The Amir of Trans-Jordan alone." The Amir would thus continue to observe any general international treaty applied to the territory in the past by the mandatory power. On April 23, 1946, the United States Secretary of State issued a statement dealing with the past history of Trans-Jordan from the American point of view.¹⁵ He noted Mr. Bevin's declaration of January 17 and cited the resolution of the General Assembly welcoming the declaration made "in respect of Trans-Jordan to establish its independence," for which the United States delegation had voted. The Department of State took the view that the treaty of March 22, carrying out that declaration, did not violate any treaties between Britain and the United States or affect American rights and interests. It regarded as premature, however, the question of American recognition of the new state. Trans-Jordan's request, presented on June 26, 1946, to the United Nations to be admitted to membership in that body was vetoed by the U.S.S.R. in the Security Council on August 29.

3. THE WAR AND THE PACIFIC MANDATES—NEW GUINEA

The "C" mandates in the Pacific, unlike the "B" mandates in Africa, were all deeply affected by the war.¹⁶ The special case of the Japanese mandated islands is referred to below.¹⁷

Probably no mandated territory was more profoundly affected than New Guinea. By the middle of 1942, the Japanese forces had overrun the mandated territory and a considerable part of the adjoining Australian territory of Papua. It took over two years of arduous warfare to eject them. The normal life of a large part of the estimated population

¹⁵ U. S. Department of State, *Bulletin*, May 5, 1946, pp. 765-66.

¹⁶ On South-West Africa, see above, Part I, Chapter VII, section 2, and below, Chapter XVII, note 2.

¹⁷ See Chapter XVII, below.

of a million native people was completely disrupted. There resulted immense destruction of facilities and property and, more important still, profound changes in mental attitudes and social structure. The loyalty and cooperation of the native people was a very important contributing factor to Allied success. The chief political and military lesson of the war in this region was perhaps that the well-being and good-will of native peoples is essential to the defense of the South-West Pacific. The territory gained immensely in the matter of capital equipment and communications, which gave some access to its highlands and helped towards an ultimate mastery of the tropical environment. The war brought also an immense change in the attitudes of the Australian people to its near north. "The New Guinea campaigns spread a new knowledge of, and an utterly new and vivid interest in, Australia's own island empire."¹⁸

War opened up much of Papua and New Guinea, not only economically, but also from a political and a military point of view. During the war the territories were—

administered as a unity by a military administration. They are, in fact, a physiographic, economic, social, and ethnological unity. Military transport, communications and supply methods have now unified them functionally. The political division is historical and arbitrary, and unrelated to these underlying real unities.¹⁹

The war indeed brought an immense change in the political and strategical, as well as probably the economic, relationship of the whole island of New Guinea and its outlying islands with respect to Australia. It became for Australia a vital strategical base for defense of the continent: "The facts of military geography strongly indicate that under foreseeable conditions of the future the Territory of New Guinea and Papua will be one of a series of increasingly critical strategic areas of vital importance to the military security of the British Commonwealth, and the United States."²⁰ During the war the latter built a base on Manus Island at a cost estimated at over \$150,000,000. The use of this base has been under discussion between the United States and Australia since the end of the war with a view to the latter taking over on December 1, 1947.

¹⁸ K. H. Bailey, "Dependent Areas of the Pacific: An Australian View," *Foreign Affairs*, April, 1946, p. 512.

¹⁹ "New Guinea Under War Conditions," by W. E. H. Stanner, *International Affairs*, October, 1944 (Royal Institute of International Affairs), p. 492.

²⁰ *Ibid.*, p. 494; on the United States bases, see *New York Times*, June 25, 1946, article by James Reston; and statement by the Australian Minister for External Affairs before Parliament, November 8, 1946, *Current Notes*, Department of External Affairs, Canberra, Vol. 17, No. 11.

The civil administrations in Papua and New Guinea were suspended on February 11, 1942, and the two territories were placed under the authority of the Commander in Chief of the Australian-New Guinea forces. A semimilitary administration covering both territories was set up under the name of the Australian-New Guinea Administrative Unit. This, although served in part by former administrative officials, was organized and run on military lines with the task of administering the two territories as a single unit. It followed the advance of the armies in the field and took over after them.

The restoration of civil administration was provided for in the Papua-New Guinea Act of October 30, 1945, introduced in the Australian Parliament in July. By June, 1946, the whole of Papua and New Guinea were once more under civil control.²¹ In introducing the bill, the Minister of External Affairs stated that "the Government does not propose at present to consider the amalgamation of the two territories, but has decided that it is undesirable to establish immediately two separate administrations." In October, 1945, an administrator was appointed to take over provisional administration of the combined territories. The Legislative and Executive Councils provided for in the New Guinea Act of 1932 were not restored. The change-over from military to civil administration for a large part of New Guinea was made at the same time. In accordance with Australia's duty as trustee, and as a means of giving some recognition of the debt of gratitude owed to the natives for their part in the war, the Act provided for better health service and education and for greater participation by the natives in the wealth of the country and eventually its government. The abolition of indentured labor in Papua and New Guinea was provided for under the Act within five years or earlier. Hours of labor have been reduced from 55 in New Guinea and 50 in Papua to 44 hours a week. The Act provided for an inquiry into wages. Meanwhile, the minimum wage rates (actual rates were higher since food, clothing, and housing were provided) of 5 shillings per month in New Guinea and 10 shillings in Papua, were increased to a monthly minimum of 15 shillings. The term of indenture was reduced to a year. Plans call for a vigorous program of education in its broadest sense, controlled and directed by the administration instead of being left as in the past mostly to missionaries.

²¹ *The Mandated Territory of New Guinea*. Memorandum of information supplied by the Australian Delegation to Subcommittee I, Fourth Committee, United Nations General Assembly, December, 1946.

The surrender of New Guinea was taken by Australian forces. An Australian force, acting on behalf of the British Empire, and of the United States Commander in Chief of the Pacific fleet, received the Japanese surrender in Nauru.²²

4. THE LEAGUE MANDATE MACHINERY DURING THE WAR

Neither the report of the last (thirty-seventh) session of the League Mandates Commission, held in December, 1939, nor that of the thirty-sixth session in the previous June, was considered by the League Council. The latter held only one session after the outbreak of the war and never met again. The Commission, being merely advisory to the Council, died with the Council. It is true that its members were still spoken of as members of the Mandates Commission and continued to receive a few documents from the League Secretariat. But it was no longer a commission in being. Without annual reports, Professor Rappard had said at the first session, the Commission would exist only on paper. From 1940 onwards only five annual reports were received from mandatory powers and circulated to members of the Mandates Commission: Japan (for the year 1938), Nauru (1939), South-West Africa (1939), and two reports for Western Samoa, 1939-40 and 1940-41.²³ The Secretary of State for the Colonies informed the British House of Commons on July 26, 1944, that "the last reports on the administration of the mandated territories for which His Majesty's Government in the United Kingdom are responsible were submitted to the League of Nations during 1939 in respect of the year 1938." He added that further reports would not be prepared during the war. The collapse of the annual report system was thus immediate and complete. In any case, voluminous annual reports for territories at war were hardly compatible with security.

A trickle of activity continued in the League Secretariat, where one official remained in the Mandates Section throughout the war. The Secretariat circulated as best it could odd special reports that continued to come out in some of the mandated territories on matters relating to public health, trade, finance, agriculture, etc., together with legislative

²² *Current Notes on International Affairs*, Department of External Affairs, Canberra, August-September, 1943, p. 176

²³ *Report on the Work of the League During the War Submitted to the Assembly by the Acting Secretary-General* (Geneva, October, 1945), L.N. Document A.6.1946.

acts and unofficial documentary material such as newspaper reports. Correspondence from French authorities in 1941 and 1943, on Syria and Lebanon, was distributed to states members of the League.²⁴

5. THE DEATH OF THE LEAGUE INTERSTATE AND THE QUESTION OF SOVEREIGNTY

The resolution on mandates adopted by the last meeting of the Assembly of the League of Nations on April 18, 1946, was as follows:

THE ASSEMBLY,

Recalling that Article 22 of the Covenant applies to certain territories placed under mandate the principle that the well-being and development of peoples not yet able to stand alone in the strenuous conditions of the modern world form a sacred trust of civilisation:

1. Expresses its satisfaction with the manner in which the organs of the League have performed the functions entrusted to them with respect to the Mandates System and in particular pays tribute to the work accomplished by the Mandates Commission;

2. Recalls the role of the League in assisting Iraq to progress from its status under an "A" Mandate to a condition of complete independence, welcomes the termination of the mandated status of Syria, the Lebanon, and Transjordan, which have, since the last session of the Assembly, become independent members of the world community;

3. Recognises that, on the termination of the League's existence, its functions with respect to the mandated territories will come to an end, but notes that Chapters XI, XII and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant of the League;

4. Takes note of the expressed intentions of the Members of the League now administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned in accordance with the obligations contained in the respective Mandates, until other arrangements have been agreed between the United Nations and the respective mandatory Powers.²⁵

The "expressed intentions" signified in the second and third plenary meetings of the League Assembly in April by the mandatory powers—Britain, France, Belgium, New Zealand, and Australia—repeated similar

²⁴ *Report on the Work of the League, 1942-1943, submitted by the Acting Secretary-General* (Geneva, 1943), L.N. Document C 25 M 25.1943, pp. 76-77.

²⁵ League of Nations, Twenty-first Ordinary Session of the Assembly, *General Questions, Report of the First Committee to the Assembly* (Geneva, April 17, 1946), L.N. Document A.33.1946, pp. 5-6.

declarations made before the United Nations General Assembly in January. The resolution recognized that with the winding up of the League its functions in respect of mandates came to an end, but that the Charter contained corresponding principles. The Assembly made no attempt, however, to bridge the legal hiatus between the Covenant and the Charter. The "expressed intentions" of the mandatories did not as such confer any rights upon the United Nations. The Assembly recognized, as did the Charter, that "other arrangements" had to be agreed upon between each mandatory and the United Nations before any new international obligations in respect of a mandated territory could exist.²⁶ Professor Kenneth Bailey, the Australian delegate who acted as rapporteur in the Assembly, said, "There will be no gap, no interregnum." But in January the Dutch jurist Baron van Asbeck, member of the Mandates Commission, had drawn the attention of the General Assembly to such a legal gap and the need of empowering the Trusteeship Council to act in the interim period.²⁷ It was no doubt true that in the territories there was no gap; here the administration with unbroken continuity continued to function in accordance with the principles of the mandate. Paul Boncour, the French delegate, in stating that France was "ready to enter into agreement as soon as the trusteeship system established by the United Nations' Charter shall come into being in respect of Togoland and the Cameroons," put his finger on the main element in the interregnum. The international trusteeship system of the United Nations did not yet apply in respect of Togoland and the Cameroons or any of the other mandates. (The "Declaration regarding Non-Self-Governing Territories" did of course apply immediately upon the entrance into force of the Charter.) The second element in the interregnum was indicated in the resolution itself; the supervisory functions of the League had come to an end before the supervisory functions of the United Nations could begin to operate, especially since the plan for a temporary trusteeship committee had been rejected in the Preparatory Commission of the United Nations. The Chinese delegate had pointed out earlier in the League Assembly,²⁸ that the Charter "made no provision for as-

²⁶ Thus, the Associated Press in a dispatch from Geneva, dated April 18, quoted the Assembly delegates as saying that in the winding-up of the League "only one loose end was left, the mandates system. They said there was no legal way to ensure that all mandates would be turned over for United Nations trusteeship."

²⁷ United Nations, *Official Records of the First Part of the First Session of the General Assembly, Fourth Committee, Trusteeship, Summary Record of Meetings, 11 January-7 February 1946* (London, 1946), p. 12.

²⁸ In the First Committee, L.N. Document A.33.1946, p. 3.

sumption by the United Nations of the League's functions" under the mandate system. His proposal for a temporary system of United Nations inspection and temporary annual reports to bridge the gap between the Covenant and the Charter was not adopted.²⁰ When the League Assembly resolution was finally voted, the Egyptian delegate made a reservation to the effect that mandates had terminated with the dissolution of the League and that, therefore, Palestine should not go under trusteeship.

The significance of this resolution of the League Assembly becomes clearer when it is realized that for many months the most elaborate discussions had been taking place between the governments as to the exact procedure to be adopted in making the transition between the League and the United Nations. It was the function of the Preparatory Commission and the committees succeeding it to make recommendations on the transfer of functions, activities, and assets of the League. All the assets of the League had been carefully tabulated. All its rights and obligations that could be bequeathed to the United Nations and which the latter desired to take over were provided for in the agreements that were made.²⁰ But in the case of mandates, the League died without a testament.²¹ There were no assets in connection with mandates which could be transferred by the League as such. If, as many jurists had claimed, the League possessed sovereignty over the mandated territories, this asset—highly important if it had indeed existed—was not mentioned among those of which such a careful inventory had been made. There was no transfer of sovereignty to the United Nations. Either title expired with the League or there never had been any League title. The mandatories were left in undisputed occupation of the territories. They had made declarations agreeing to continue their administration in accordance with the principles of the Covenant, and, in certain cases, of their intention to conclude trusteeship agreements under the Charter. But until, by virtue of such trusteeship agreements, the trusteeship system of the Charter could come into operation in relation to the particular

²⁰ Associated Press dispatch from Geneva, April 9, 1946.

²⁰ U. S. Department of State, *Bulletin*, April 28, 1946, p. 691.

²¹ At the San Francisco Conference, the Egyptian delegate had moved the omission of the words "subsequent agreement" from Article 77 of the Charter on the ground that "no private title to a mandated territory could lie with a mandatory power. It was for the League itself to pass title to such territories, perhaps by a general agreement with the new Organization, and not for the mandatory power to undertake to do so by individual agreements." This amendment was rejected by 22 votes to 5. United Nations Conference on International Organization, *Documents*, Vol. X, p. 469.

territories, the mandatory powers remained in possession. Sovereignty, wherever it might lie, certainly did not lie in the United Nations. Any claims that the United Nations might choose to make would have to be defined in the trusteeship agreements which were still to be negotiated. And unless those texts gave clear grounds—as they do not—for basing a claim to United Nations sovereignty, no such sovereignty could exist. For the time being, therefore, one at least of the theories of sovereignty in relation to the mandated territories had fallen to the ground.⁸²

It could hardly any longer be seriously contended that sovereignty still lay with the five Principal Allied and Associated Powers, two of which, Italy and Japan, were enemy states. Any claim that Italy might have had (e.g., under Article 119 of the Treaty of Versailles or Article 16 of the Treaty of Lausanne) was extinguished by Article 40 of the Peace Treaty of February 10, 1947, which read: "Italy hereby renounces all rights, titles and claims deriving from the mandate system or from any undertakings given in connection therewith, and all special rights of the Italian State in respect of any mandated territory."

The ending of the mandate system strengthened the view that (at least as regards the "B" and "C" mandates) it was the mandatory that possessed sovereignty, subject to the servitudes imposed by Article 22 of the Covenant and the text of the mandate. Nor did such a view appear to be invalidated by the trusteeship agreements which replaced the mandates. But if the problem of sovereignty was simplified it was not solved. For in negotiating trust agreements the mandatory powers (which enjoy the exercise of sovereignty) insisted that they made no claim to the possession of full sovereignty.⁸³

⁸²In this connection, see note on South-West Africa, below, Chapter XVII, note 2.

⁸³See the author's article on "International Trusteeship" in the *British Year Book of International Law*, 1947.

EPILOGUE

CHAPTER XVII

THE UNITED NATIONS TRUSTEESHIP SYSTEM

I. WHAT TRUSTEESHIP ADDS TO AND TAKES AWAY FROM MANDATES

Mandates are finished but trusteeship goes on. How far, for how long, under what conditions, whether better or worse than the League mandates, cannot be foreseen. The fate of the system depends on the fate of the United Nations as a whole; but it depends also on the internal evolution of the system itself. Most of all it depends on whether the organs and members of the United Nations can resist the temptation to use trusteeship as a political weapon in interstate rivalries instead of as an instrument of welfare for the peoples directly concerned. Trusteeship proved to be one of the most controversial questions in the United Nations Conference at San Francisco which framed the Charter, in the Preparatory Commission of the United Nations in November-December, 1945, in the two parts of the First General Assembly in 1946, and in the Security Council in 1947.

In the Annexes to this book are printed the main instruments of the League mandate system as well as the instruments which superseded that system, namely, the trusteeship chapters of the United Nations Charter (XII and XIII), the trusteeship agreements so far negotiated, and the rules of procedure of the Trusteeship Council which superseded the Permanent Mandates Commission. Also among the documents is included Chapter XI of the Charter—the Declaration regarding Non-Self-Governing Territories. This, though not part of the trusteeship system, since it deals with national and not international trusteeship, nevertheless is linked with it. Annex II gives a list of the mandates as they existed in the last years of the League, and indicates those which have become independent states since 1939 (Syria and Lebanon and Trans-Jordan), and those which have been placed so far under United Nations trusteeship (Tanganyika, the two Cameroons, the two Togolands, Ruanda-Urundi, New Guinea, Western Samoa, Nauru, and the Pacific Islands. It was decided in 1947 to place Jerusalem under United Nations trusteeship.¹ A few last words may be devoted here to

¹The draft Statute of Jerusalem (U.N. Document T/1118/Rev. 1, March 5, 1948) made the City a *corpus separatum*, demilitarized and neutralized. It was to be placed under a Special International Regime with the Trusteeship Council as the United Nations administering authority.

the steps whereby the mandates became United Nations trusteeship territories and the trusteeship system of the United Nations was finally established.

At its height the mandate system had a third more territories under it than the trusteeship system. The Charter devotes far more words to the trusteeship system than did the Covenant, and the texts of the trusteeship agreements are more detailed than the mandates. The additional substance does not correspond to the additional words. For the additions consist in the main of the spelling-out in much greater detail of what was already implicit in the Covenant and the mandates.

In the matter of machinery of supervision, the most important change is the substitution of a Trusteeship Council composed of governments, in place of a Mandates Commission composed of members acting in their personal capacity and not in any direct dependence on their governments. Whereas on the Mandates Commission the nationals of mandatory powers were required to be in a minority, the Trusteeship Council is divided equally between powers administering trust territories and those not administering. Which method of constituting the international supervisory body will best serve the interests of the native inhabitants and the cause of world peace remains to be seen. A government representative who meets the requirement of the Charter that he shall be a "specially qualified person" will not only have the more precise data which a government representative, as compared with a private person, alone can possess, but will speak with greater authority than an expert not representing his government. Moreover it is doubtful whether a commission composed like the Mandates Commission could have become a principal organ of the United Nations, as is the Trusteeship Council under the Charter, or could have exercised the somewhat greater powers (especially periodic visits) which the Charter gives to the Trusteeship Council.

A further change in machinery which emphasizes the importance attached to the trusteeship provisions of the Charter is that the final authority is given (except in the case of strategic areas) to the General Assembly, which the Trusteeship Council serves. The Charter (Article 87) makes the Trusteeship Council the agent of the Assembly in (1) considering the (annual) reports made by the administering authority; (2) accepting and examining petitions (in consultation with the administering authority); (3) providing for periodic visits to the trust territories at times agreed upon with the administering authority. What

will be the effect in the long run of the transfer of action on trusteeship matters (except in relation to a "strategic area" trusteeship) from the narrower forum of the League Council to the General Assembly of the United Nations cannot be foreseen.

Apart from questions of machinery the trusteeship system introduced several important modifications of the mandate system, particularly in relationship to economic equality and defense. Its treatment of both these matters is rather more supple and realistic. The economic-equality or open-door clause providing for "equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals" is subject to the very important qualification that the open door shall not prejudice the advancement of the inhabitants, or be detrimental to international peace and security. Neither Article 22 of the League Covenant nor the Berlin and Brussels Acts of 1885 and 1890, which first applied the open-door principle to Central African territories, had any such qualification. Historically, indeed, the open door was introduced primarily in the interest of the trading countries. The open-door system of the "B" mandates was parallel to and involved the same objections as the "unequal treaties" which imposed the open door on China. The "B" mandates were in fact essentially "unequal treaties," which tended in some respects to operate to the detriment of the native inhabitants.

The most important modification of the mandate system made by the Charter is in its treatment of defense. The unrealistic provisions regarding non-fortification have been dropped; and any doubt as to the right of a mandatory to use forces recruited in the territory for defense purposes outside the territory itself is dissipated. Under Article 84 it becomes the positive "duty" of the trust power "to ensure that the trust territory shall play its part in the maintenance of international peace and security." In order to carry out "the obligations towards the Security Council" which the administering authority might undertake (under Articles 84 and 43) it is given the right to use the manpower of the territory on a volunteer basis, as well as its material resources. The Charter moreover adds (as the result of an American proposal made at the San Francisco Conference) the highly important new provision for the special "strategic area" form of trusteeship. By virtue of this provision (Articles 82-83) the whole or part of a trust territory can be designated in the trust agreement as a "strategic area," which will thereby be placed under the jurisdiction of the Security Council instead of that of the Gen-

eral Assembly. The Security Council, in exercising its jurisdiction, has to avail itself of the assistance of the Trusteeship Council in performing "those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas"; but this must be subject to the terms of the agreements and "without prejudice to security considerations." The interpretation of this limiting clause was to show that it could override the basic objectives of Article 76 such as economic equality. The far-reaching implications of these provisions were never seriously examined at San Francisco, although Articles 82-83 were among the most obscure of the Charter. They were finally spelt out in detail in the first strategic-area trusteeship agreement—that devised by the United States for the former Japanese mandated islands and approved by the Security Council on April 2, 1947.^{1a} If one trusteeship can be interpreted in this fashion, why not the others? The possibility of switching over to the strategic-area form is reserved in some of the trusteeship agreements (e.g., Tanganyika, Article 17) and legally exists for all. The defense clauses of the normal trusteeships based on Article 84 are in the main parallel to those in the strategic-area version, and the strategic importance of the territories to some of the trust powers is even greater than the strategic importance of the Pacific Islands to the United States. All trust territories are placed by the Charter within the defense system of the administering authority subject to the terms of Article 84. The meaning of the change made by the Charter as regards defense has only become fully clear in the light of the nature and the timing of this new strategic-area version of trusteeship, launched as it was when the differences between the powers were deeper than had seemed possible at San Francisco. In one further respect the Charter marked an important advance on the Covenant, namely, as regards the ultimate destiny of a trust territory. For the "A" mandates, the Covenant could be interpreted—and the Mandates Commission was inclined to read it thus for all—as implying that the only legitimate goal for a mandate was independence. By substituting the phrase "towards self-government or independence," the Charter diminished the force of the charge that international trusteeship means still more new sovereignties in a world already suffering from too great fragmentation. As if to emphasize the

^{1a} For text, see Annex XIV; approved by the United States Government after due constitutional process on July 18, 1947. U. S. Department of State, *Bulletin*, July 27, 1947, pp. 178-79.

importance of the change, the framers of the Charter rejected any reference to independence in the Declaration regarding Non-Self-Governing Territories. Moreover, the Charter adds to the basic objectives for international trusteeship territories the significant words "to encourage recognition of the interdependence of the peoples of the world."

2. THE SETTING-UP OF THE TRUSTEESHIP SYSTEM

The transition from the trusteeship provisions of the Charter to the setting-up of the trusteeship system itself, bore some resemblance to the similar transition in 1919-23, described above. It was beset by even greater difficulties. More than two years after the Charter was signed there was still not in sight any agreement to add any new territories to the trusteeship system other than the old mandates. Because of an unforeseen legal difficulty in the Charter, it was not possible to set up the Trusteeship Council until a certain number of the mandated territories, enough to satisfy the requirements of Article 86 of the Charter, had been brought under trusteeship by agreements approved by the General Assembly. The attempt made in the Preparatory Commission of the United Nations in the fall of 1945 to set up a temporary trusteeship committee broke down owing to the opposition of the U.S.S.R. and several other countries on the ground that such a step was not legal.

The apparently simple act of changing the existing mandates into trusteeship agreements proved to be much more complex than was anticipated. Under the Charter no territory, whether mandated or ex-enemy or other, could come under the trusteeship system except by "subsequent agreement," which had to include the agreement of the mandatory in the case of a mandated territory as well as of the other mysterious "states directly concerned." There was no possibility of discovering these states and they have never been identified. The General Assembly was forced in the end to approve the draft trusteeship agreements submitted to it by the mandatory states without being able to specify the "states directly concerned," or to be certain that they approved. In approving the trusteeship agreements, the Assembly recognized that no state had waived or prejudiced its right hereafter to claim to be a state directly concerned in relation to approval of any subsequent trusteeship agreement or any alteration or amendment of any of the agreements approved by the Assembly at its first session. The eight trusteeship agreements were finally adopted by the General Assembly on December 13,

1946, by more than the necessary two-thirds vote. The Soviet delegation and several other members opposed approval mainly on the grounds that the "states directly concerned" had not been identified, that the agreements made the trust territories an integral part of the administering power in certain cases, and that they did not provide for the Security Council's approval of military arrangements in the trust territories.^{1a} Thus, the launching of the trusteeship agreements was beset by some legal objections as well as by political controversy.

The actual process of drafting and negotiating the trusteeship agreements passed through three stages. At the General Assembly meeting in January, 1946, the mandatory powers (except South Africa²) had

^{1a} The same objections by the same group of delegations were renewed when the General Assembly on November 1, 1947, approved by 46 votes to 6 (with 1 abstention) the trusteeship agreement for Nauru.

² In the case of South-West Africa, the General Assembly, on December 14, 1946, rejected the idea of incorporation of the territory in the Union of South Africa. The Union Government had stated that this was the desire of the majority of the inhabitants as ascertained by the most careful enquiry. The Assembly held that "the African inhabitants of South West Africa have not yet secured political autonomy or reached a stage of political development enabling them to express a considered opinion which the Assembly could recognize on such an important question as incorporation of their territory." The Assembly therefore recommended that the territory should be placed under the international trusteeship system and invited the Union Government to propose a trusteeship agreement for this purpose. U.N. Document A/64/Add. 1, p. 124. The decision of South Africa as announced to the Second General Assembly in September, 1947, was (1) "not to proceed with the incorporation of the Territory desired by its inhabitants"; (2) "to maintain the *status quo* and to continue to administer the Territory in the spirit of the existing mandate," making an annual report to the United Nations for its information; (3) to give the Territory representation in the Parliament of the Union as an integral part thereof.

The Government reported that the result of a second consultation of the non-European and European peoples of the Territory (at which the view of the General Assembly was presented to them) showed that the large majority of the inhabitants, non-European and European, still favored incorporation. Action in accordance with the Assembly resolution was therefore not possible without flouting the wishes of the inhabitants. U.N. Documents A/334, August 1, 1947, and A/334 Addendum, September 22, 1947. At the Fourth Committee on September 27 the representative of the Union of South Africa "explained that the annual report which his Government would submit on South West Africa would contain the same type of information on the territory as is required for Non-Self-Governing Territories under Article 73 (e) of the Charter. It was the assumption of his Government, he said, that the report would not be considered by the Trusteeship Council and would not be dealt with as if a Trusteeship agreement had in fact been concluded. He further explained that, since the League of Nations had disappeared, the right to submit petitions could no longer be exercised, since that right presupposes a jurisdiction which would only exist where there is a right of control or supervision, and in the view of the Union of South Africa no such jurisdiction is vested in the United Nations with regard to South West Africa." U.N. Document A/422, October 27, 1947.

The Fourth Committee on October 15 passed a resolution (27 to 20, with 4

declared their intention of drawing up trusteeship agreements for the "B" and "C" mandated territories. The General Assembly, in a resolution adopted on February 9, welcomed these declarations and invited the mandatory powers in concert with the other states directly concerned to take the steps necessary to conclude trusteeship agreements for submission to the second part of the first session of the General Assembly, which was planned for September and met in October, 1946. The British Government led the way by circulating draft agreements in January to those states which it regarded as in any case directly concerned, and *for information* to the United States, the U.S.S.R., and China—but without prejudice to the ultimate interpretation of the obscure phrase "directly concerned." These drafts served as models for the Belgian draft circulated a few days later as well as for the French drafts circulated in June. The British drafts were published in June and July on receipt of comments from the states which the British Government considered as in any case directly concerned (Belgium for Tanganyika, France for the Cameroons and Togoland, and South Africa for all three). The whole drafting process before the Assembly met was concisely summed up by the British delegate before the General Assembly on December 11 in the following words:

Our first texts were circulated in January to a number of other governments and were published in that form in June. Before this they had been carefully worked out in consultation with the territorial governments concerned. Only one of the member states to whom the original text had been circulated (the United States) suggested any amendments, and these were discussed with the representatives of the United States Government during the summer. . . . Some of these suggestions were accepted, others accepted in a modified form in which both sides agreed, others by mutual consent were not pursued, and one was left over to be raised before the United Nations.

abstentions) asserting it is the "clear intention" of the Charter that all mandates shall be brought under trusteeship (if not given prior independence), maintaining the recommendation urging that a trusteeship agreement should be presented, and in time for the next General Assembly, and authorizing the Trusteeship Council to examine the report on South-West Africa for the year 1946, presented by the Union. The debate is summed up in the Report of the Fourth Committee to the General Assembly. *Ibid.* The General Assembly on November 1 (having first ruled that a two-thirds majority was required) watered down this resolution by a vote of 41 against 10 (with 4 abstentions). It rejected the paragraph presuming to interpret the "clear intention" of the Charter and merely expressed the hope that the trusteeship agreement which it urged South Africa to submit would be available for the next General Assembly if the government should find this possible. See the author's note on "South West Africa" in the *British Year Book of International Law*, 1947.

On top of this elaborate course of procedure the Assembly turned itself into a drafting committee. The awkward process of trying to draft hurriedly the basic constitutional documents of eight territories in a very large and ill-prepared committee yielded small results. Although no less than 229 amendments were proposed, very few amendments were in fact made in the six weeks of debate. Each amendment required the full assent of the mandatory power concerned, which was the immediate guardian of the interests of the territory. The Assembly accepted the legal position that it had no power to amend of its own motion without the full consent of the mandatory power. Both the amending process prior to the Assembly (in the case of the British texts) and the few amendments accepted by the mandatories as a result of the discussion in the Assembly, are shown in detail in the texts of the trusteeship agreements annexed below.^a

The General Assembly approved on December 13 the eight trusteeship agreements submitted by the British, French, Belgian, Australian, and New Zealand governments. It then proceeded to constitute the Trusteeship Council by electing, on December 14, Mexico and Iraq as non-administering members, thus completing the balance between administering and non-administering members required by Article 86 of the Charter. The Soviet Union did not participate in the election on the ground that the trusteeship agreements were contrary to the Charter, that therefore the voting procedure did not in its view have a legal basis. The Trusteeship Council was thus composed at its inception as follows: administering states, Great Britain, France, Belgium, Australia, and New Zealand; non-administering states, the United States, U.S.S.R., China (as permanent members of the Security Council), together with Mexico and Iraq.^{ba}

The Council held its first session—mainly a machinery session—from March 26 to April 28, 1947. The U.S.S.R. was not represented. The representative of the United States was elected president.^{bb}

^a Annex XIII. For final texts, see U.N. Document T/8, March 25, 1947, and series T/Agreements 1 ff., 1947. The debate in the General Assembly was summed up in the Report of the Fourth Committee, U.N. Document A/258, December 12, 1946.

^{ba} Acceptance of the Pacific Islands trusteeship has now made the United States an administering state. The U.S.S.R. was not an active member until April, 1948.

^{bb} See Trusteeship Council, *Report to the General Assembly covering its First Session (26 March–28 April 1947)*, U.N. Document A/312, June 12, 1947; Trusteeship Council, *Official Records, First Year: First Session (New York, 1947)*; *Resolutions Adopted by the Trusteeship Council during its First Session from 26 March to 28 April 1947*, Doc. T/43, May 7, 1947.

3. NON-SELF-GOVERNING TERRITORIES

The question of non-self-governing territories, and the procedures to be adopted by the United Nations under Chapter XI of the Charter—Declaration regarding Non-Self-Governing Territories—were debated at length by the General Assembly. The Declaration fully recognizes national trusteeship in dependent areas. It defines the principles upon which national trusteeship should operate, thus giving international recognition to the long-established national principle of the "sacred trust." The principles are general and apply to all dependencies (including the few which are under international trusteeship). Article 73(e) provides for the regular transmission to the Secretary General of "statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories." This, according to the Charter, is transmitted "for information purposes." The British Commentary on the Charter noted that "the general declaration . . . does not empower the United Nations Organisation to intervene in the application of these principles by the Powers concerned."⁴

At the first part of its first session, on February 9, 1946, the General Assembly adopted a resolution requesting the Secretary General to include in his annual report a summary of such information as he might receive under Article 73 (e). Following a letter dated June 29, 1946, from the Secretary General to all member states, information was supplied or promised by the governments of the United States, Great Britain, France, Australia, Belgium, Denmark, Netherlands, and New Zealand in respect of seventy-two non-self-governing territories.⁵ The pro-

⁴ Cmd. 6666, 1945, p. 11. This legal interpretation was accepted by a majority of the delegations at the second session of the General Assembly, including the United States and France.

⁵ See U.N. Documents A/74, October 21, 1946; A/74/Add. 1, October 26, 1946; A/C.4/29, November 1, 1946; A/C.4/52, November 8, 1946; A/249, December 11, 1946 (Report of Fourth Committee); also *Non-Self-Governing Territories; Summaries of Information Transmitted to the Secretary General during 1946* (Document 1947 VI B1); and the following documents presenting summaries of information by the governments of the United Kingdom (A/319, July 16, 1947, and Addenda); United States (A/320, July 25, 1947); France (A/321, August 6, 1947); Belgium (A/322, July 30, 1947); Netherlands (A/323, August 15, 1947, and Addenda); Denmark (A/324, July 28, 1947); New Zealand (A/325, August 21, 1947); Australia (A/326, August 6, 1947).

The Secretary's General Report giving an analytical summary of the above material is in Document A/327, August 20, 1947, and Addenda. The minutes of the *ad hoc* Committee, which began its meetings on August 28, are in Documents A/AC.9/SR.1, August 29, 1947, and following; its report is in Document A/385, September 18, 1947.

cedure to be adopted in dealing with the information thus received was debated in the second part of the first session of the General Assembly.

The limitations in the Charter, that the data should be of a "technical nature"—not political—and should be transmitted to the Secretary General "for information purposes," were the result of a compromise at San Francisco. The purpose of the limiting words was to prevent the information being used for political purposes, e.g., to prevent outside interference in the government of the territories. In the Preparatory Commission of the United Nations in the fall of 1945 through the 1946 meetings of the General Assembly (as in the *ad hoc* Committee in 1947 and the second General Assembly) there was strong pressure on the part of a number of delegations to go beyond the wording of the Charter in order to prepare the ground for intervention by the United Nations Organization in the application of the principles of Chapter XI. The discussion in the Assembly revolved around questions of procedure but these had important political implications.

The result of the long and controversial debate on procedure was a resolution, adopted by the Assembly, on December 14, 1946, as follows:

The General Assembly, therefore,

1. *Invites* the Members transmitting information to send to the Secretary-General by 30 June of each year the most recent information which is at their disposal;

2. *Recommends* that the information transmitted in the course of 1947 by Members of the United Nations under Article 73e of the Charter should be summarized, analyzed and classified by the Secretary-General and included in his report to the second session of the General Assembly, in order that, in the light of the experience gained, the General Assembly may be able to decide whether any other procedure may be desirable for dealing with such information in future years;

3. *Recommends* that the Secretary-General communicate to the specialized agencies the information transmitted, with a view to making all relevant data available to their expert and deliberative bodies;

4. *Invites* the Secretary-General to convene, some weeks before the opening of the second session of the General Assembly, an *ad hoc* Committee composed in equal numbers of representatives of the Members transmitting information under Article 73e of the Charter and of representatives of Members elected, by the General Assembly at this session, on the basis of an equitable geographical distribution;

5. *Invites* the Secretary-General to request the Food and Agriculture Organization, the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization and the International Trade Organization, when constituted, to

send representatives in an advisory capacity to the meeting of the *ad hoc* committee;

6. *Invites* the *ad hoc* Committee to examine the Secretary-General's summary and analysis of the information transmitted under Article 73e of the Charter with a view to aiding the General Assembly in its consideration of this information, and with a view to making recommendations to the General Assembly regarding the procedures to be followed in the future and the means of ensuring that the advice, expert knowledge and experience of the specialized agencies are used to the best advantage.^{6a}

Paragraphs 1, 2 and 3 were adopted unanimously. The controversy centered on paragraphs 4, 5 and 6 providing for the creation of an *ad hoc* committee. This proposal was originally put forward by the Secretariat, rejected by Sub-Committee 2 of the Assembly's Fourth Committee, taken up again by the Delegation of Cuba, carried by the Fourth Committee, and finally by the Assembly itself.⁶ In the final vote 28 states voted for it, 15 states against, and 7 abstained. The opposition included the United Kingdom, the United States, France and the other "colonial" powers (New Zealand abstained).

The idea of an "*ad hoc* committee" was on the surface a purely temporary procedure, but it had far-reaching implications for the future. The grounds of the opposition to it were mainly twofold: (1) that an *ad hoc* committee was an unnecessary and undesirable duplication of work which the Secretariat could perform (since *a priori* the information and its examination were not political), and (2) that the whole procedure clearly went beyond the provisions of the Charter, which was a fundamental agreement secured with great difficulty at the San Francisco Conference of the United Nations.

The *ad hoc* Committee met from August 28 to September 12, 1947, prior to the second session of the General Assembly, to examine the information with a view to making recommendations to the General Assembly. It was constituted somewhat on the lines of the Trusteeship Council, being composed of representatives of the eight states transmitting information on territories administered by them and of eight members, elected by the Assembly, on the basis of an equitable geographical

^{6a} U.N. Document A/64/Add. 1, January 31, 1947, pp. 125-26.

⁶ U.N. Documents A/C.4/29, November 1, 1946; A/C.4/59, November 13, 1946; A/C.4/Sub.2/4, November 16, 1946; A/C.4/Sub.2/10, November 20, 1946; A/C.4/Sub.2/19, November 22, 1946; A/C.4/68, December 5, 1946; A/249, December 11, 1946 (Report of Fourth Committee; sums up the discussion); U.N. Journal No. 63, Supplement A-A/P.V./64 (Plenary discussion).

distribution. The elected members were Brazil, China, Cuba, Egypt, India, the Philippine Republic, the U.S.S.R., and Uruguay.

In the course of its meetings the Committee⁷ rejected several proposals by the Soviet and other delegations, including (a) visits by the United Nations to non-self-governing territories; (b) the right of the United Nations to receive and examine petitions from such territories; (c) instructions to the Secretary General to make use in his analyses of information drawn from unofficial sources in the territories.

The *ad hoc* Committee agreed by a majority that there was no obligation under Article 73 to submit information on "political progress"; if, however, governments sent such information voluntarily there was no objection to the Secretary General including it in his summary. The Committee approved a detailed standard form for the guidance of member states in the presentation of information to be transmitted under Article 73(e)—information on political and administrative subjects being left optional. It agreed that in preparing his summary and analysis of information the Secretary General may use supplementary *official* publications, provided the government concerned is consulted and gives its consent, and provided his use of such information is limited to subjects listed in Article 73(e). To meet the point made by a number of delegations that since conditions of the kind reported upon exist equally in many member states, and that comparative data would therefore be essential to any understanding of the situation in dependencies, the Committee agreed that "for purposes of comparison the Secretary-General should be authorized, in addition, to include in his summaries and analyses all relevant and comparable official statistical information as is available in the statistical services of the Secretariat and as may be agreed upon between the Secretary-General and Member States, giving appropriate citation of sources."

As regards future procedure for the examination of information under Article 73(e), the *ad hoc* Committee proposed that the Assembly should invite its Fourth Committee to constitute a special committee composed of members transmitting information under Article 73(e) and an equal number elected by the Fourth Committee. The special committee was to examine information submitted on economic, social, and educational conditions (not political) and to submit reports thereon to the General

⁷ Information from Non-Self-Governing Territories Transmitted under Article 73(e) of the Charter: Report of the *ad hoc* Committee to the General Assembly, Document A/385, September 18, 1947.

Assembly with "such procedural recommendations as it may deem fit, and with such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual territories."

All these resolutions were finally adopted by the General Assembly. But before this occurred the anti-colonial bloc, led by the U.S.S.R. and India, in the Assembly's Fourth Committee, succeeded by a series of votes carried by very narrow margins in undermining the agreement reached in the *ad hoc* Committee. The objective aimed at by the Fourth Committee in the new resolutions carried by it were to assimilate all non-self-governing territories to those under international trusteeship, thus wiping out the sharp distinction drawn between the two categories by Chapters XI and XII of the Charter.

Under the Fourth Committee's new proposal the sending by governments of information on political progress was to be *recommended* by the Assembly. The position of the minority was that, as a result of an agreement at San Francisco, the Charter excluded political information from Article 73(e). Thus governments were under no obligation, either legal or moral, to supply it. To attempt to make them do so was an attempt to rewrite the Charter by Assembly resolution.

Another decision denied the use of comparative information from similar geographical zones by restricting it to data relating only to the *metropolitan areas* of the administering powers.

A further resolution greatly widened the powers of the special committee by enabling it to make such recommendations as it deemed appropriate. This was objected to by the United States representative as an attempt to change the Charter, since the United Nations does not have any power of supervision over the administration of non-self-governing territories. The resolution, he pointed out, blurred the fundamental difference between Chapters XI and XII-XIII of the Charter, and placed no limits on the powers of the special committee. The United Kingdom representative added that the special committee as now proposed would be a rival organ to the Trusteeship Council. These Fourth Committee resolutions were rejected by the General Assembly on November 3, 1947, by substantial majorities, and the resolutions of the *ad hoc* Committee were adopted in their place.

The trend in the Fourth Committee was shown most clearly by the passage on October 14 (by 25 votes to 23, with 3 abstentions) of a resolution moved by the Indian delegation for the application of the

trusteeship system to all non-self-governing territories. This was carried despite the objection of the United States delegate that the resolution was a vote of no confidence in Chapter XI of the Charter. Citing Article 77(1)(c) of the Charter (which covered the possibility that states might voluntarily place territories under trusteeship), the resolution expressed the hope that members of the United Nations would submit trusteeship agreements for all or some of the territories not ready for self-government on the ground that the trusteeship system "provides the surest and quickest means of enabling the peoples of dependent territories to secure self-government or independence under the collective guidance and supervision of the United Nations." The minority objected to this assumption and pointed out that the trusteeship system itself might lead to other solutions besides those of autonomy or independence, e.g., closer union with the metropolitan country. Moreover, the proposal to place them under international trusteeship would be resented by many of the peoples concerned.⁸ The resolution was finally rejected by the General Assembly on November 1, 1947, by a vote of 24 to 24, with 1 abstention, after the Assembly had ruled that its passage required a two-thirds majority.

Thus, the trusteeship system was finally launched, with the legal basis of the agreements challenged by some great powers, and in an atmosphere of political tension and profound ideological division.

It was launched, not like the mandates into the quiet waters of a non-governmental body—that had debated in private, eschewed politics in the main, and worked closely with the mandatory governments on a practical policy of welfare—but into the midstream of world politics and the turbulent waters of the world frontier.

The trusteeship system was not a piece of machinery and a set of principles free to operate in a rational and ordered world. The "circumstances" in which it had to operate included: the chaos resulting from the fall of the empires of the Axis; the vast new expansion of the Soviet system and empire; the threat to peace and order caused by the weakening of some of the major colonial powers that had borne first and alone the brunt of the enemy onslaught; the revolutionary spirit quickened by war in Asia; the outbursts of passion and hatred, following the

⁸ U.N. Document A/423, October 27, 1947.

transfer of sovereignty in India, bringing death to hundreds of thousands and exile to millions; the new anxieties for all nations created by long-range weapons and the atomic bomb; and the general doubt whether man had yet reached the stage in his evolution when his own passion and irrationality could be mastered by any machinery he could himself devise.

In its short history United Nations trusteeship has come to be recognized as one of the most controversial of the fields dealt with by the Organization, as a battleground for ideological and political conflict. Only the future can tell whether United Nations trusteeship, and the obligations assumed by the powers under Chapter XI of the Charter, are to be a lamp to light forward the way of dependent peoples, or—

. . . a torch-flame turned
By the wind back upon its bearer's hand. . . .

ANNEXES

ANNEX I

ARTICLE 22 OF THE LEAGUE OF NATIONS COVENANT

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor

¹ The annexes contain the texts of the main documents regarding mandates and trusteeships except the Provisional Questionnaire, approved by the Trusteeship Council on April 25, 1947, which was transmitted to the administering authorities concerned as the basis for their first annual reports on trust territories, with the understanding that it would be revised and adapted, if necessary, to specific trust territories at the November, 1947, session of the Council. For text, see U.N. Document T/44, May 8, 1947.

traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ANNEX II

DISTRIBUTION OF MANDATES AND TRUSTEESHIP TERRITORIES^a

MANDATORY POWER (Administering Authority)	TERRITORY	AREA Sq. Km. ^b	POPULATION (1938)
<i>Britain</i>	Tanganyika ^c	932,364	5,257,929 ^d
	Togoland ^e	33,772	370,327 ^f
	Cameroons ^e	88,266	857,675 ^g
	Palestine.....	27,009	1,435,341 ^h
	Trans-Jordan.....	Declared independent 1946	
	Iraq.....	Declared independent 1932	
<i>France</i>	Cameroons ^e	429,750	2,609,508 ⁱ
	Togoland ^e	52,000	780,699 ^j
	Syria and Lebanon.....	Declared independent 1944	
<i>Belgium</i>	Ruanda-Urundi ^e	53,200	3,752,742
<i>South Africa</i>	South-West Africa.....	822,909	292,079 ^k
<i>Australia</i>	New Guinea ^e	240,864	587,625 ^l
<i>New Zealand</i>	Western Samoa ^e	2,934	57,759 ^m
<i>British Empire</i>	Nauru (Administered by Australia) ^e	29.29	3,400 ⁿ
<i>Japan (Replaced by U.S.A.)</i>	Caroline, Mariana and Marshall Islands ^d	2,149	121,128 ^o

^a Figures for area and population are taken from *The Mandates System; Origin—Principles—Application* (Geneva: League of Nations, 1945).

^b 1 square kilometer = 0.3861 of a square mile.

^c Under United Nations trusteeship system.

^d Strategic area under trusteeship system, administered by the United States.

^e Natives, 5,214,800; non-natives, 43,129 (Europeans, 9,345; Asiatics, 33,784). The total given in *Britain and Trusteeship*, British Information Services (New York, February, 1947), is 5,250,000.

^f Natives. The total given in B.I.S. pamphlet is 341,254.

^g Natives, 857,227; non-natives, 448. The total is the same as that given in B.I.S. pamphlet.

^h Moslems, 900,256; Jews, 411,263; Christians, 111,983; others, 11,839. The total given in the *Report of the Anglo-American Committee of Enquiry regarding the Problems of European Jewry and Palestine* (London, 1946), Cmd. 6808, was 1,765,000 at the end of 1944, of which 31 per cent, or 554,000, were Jews; and 1,061,000 were Moslems; and 136,000, Christians.

ⁱ Natives, 2,606,281; non-natives, 3,227.

^j Natives, 780,170; non-natives, 529.

^k Native and colored population, 261,138. European, 30,941. The total given in B.I.S. pamphlet is 357,787.

^l Natives counted, 581,342; non-natives (counts) 6,283. The total given in B.I.S. pamphlet is 590,613.

^m Natives, 54,160; non-natives, 3,599. The total given in B.I.S. pamphlet is 59,306.

ⁿ Nauruan natives, 1661; Chinese, 1,533; others, 206. The total given in B.I.S. pamphlet is 3,383. When the Japanese occupied Nauru (August 23, 1942) the native Nauruans numbered 1827. When Australia took over again on September 13, 1945, the figure had fallen to 1278.

^o Natives, 50,868; Japanese, 70,141; other foreigners, 119. The population figure given by the United States representative to the Security Council on February 26, 1947, was 48,000 native inhabitants, and the area figure, 846 sq. mi. (2191 sq. km.). Department of State Publication 2784, Far Eastern Series 20, p. 15. Most of the Japanese have been repatriated to Japan.

ANNEX III

TEXT OF AN "A" MANDATE: PALESTINE

MANDATE FOR PALESTINE¹

The Council of the League of Nations:

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and

Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and

Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

Whereas by the afore-mentioned Article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

ARTICLE 1. The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

¹ L.N. Document C.520.M.314.1922.VI; *Terms of League of Nations Mandates*, Republished by the United Nations (United Nations, Lake Success, New York, October, 1946), No. 3.

ARTICLE 2. The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

ARTICLE 3. The Mandatory shall, so far as circumstances permit, encourage local autonomy.

ARTICLE 4. An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.

The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish national home.

ARTICLE 5. The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

ARTICLE 6. The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes.

ARTICLE 7. The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

ARTICLE 8. The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

ARTICLE 9. The Mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights.

Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in accordance with religious law and the dispositions of the founders.

ARTICLE 10. Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the Mandatory and other foreign Powers shall apply to Palestine.

ARTICLE 11. The Administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the Mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The Administration may arrange with the Jewish agency mentioned in Article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the Administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the Administration.

ARTICLE 12. The Mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

ARTICLE 13. All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the Mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the Mandatory from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the Mandatory authority to interfere with the fabric or the

management of purely Moslem sacred shrines, the immunities of which are guaranteed.

ARTICLE 14. A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council.

ARTICLE 15. The Mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the Administration may impose, shall not be denied or impaired.

ARTICLE 16. The Mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

ARTICLE 17. The Administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the Mandatory, but shall not use them for purposes other than those above specified save with the consent of the Mandatory. Except for such purposes, no military, naval or air forces shall be raised or maintained by the Administration of Palestine.

Nothing in this article shall preclude the Administration of Palestine from contributing to the cost of the maintenance of the forces of the Mandatory in Palestine.

The Mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

ARTICLE 18. The Mandatory shall see that there is no discrimination in Palestine against the nationals of any State Member of the League of Nations (including companies incorporated under its laws) as compared with those of the Mandatory or of any foreign State in matters concerning tax-

ation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this mandate, the Administration of Palestine may, on the advice of the Mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the Mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

ARTICLE 19. The Mandatory shall adhere on behalf of the Administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

ARTICLE 20. The Mandatory shall co-operate on behalf of the Administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

ARTICLE 21. The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nationals of all States Members of the League of Nations.

(1) "Antiquity" means any construction or any product of human activity earlier than the year 1700 A.D.

(2) The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

(3) No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

(4) Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5) No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Department.

(6) Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archæological interest.

(7) Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archæological experience. The Administration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds.

(8) The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

ARTICLE 22. English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew and any statement or inscription in Hebrew shall be repeated in Arabic.

ARTICLE 23. The Administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities.

ARTICLE 24. The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report.

ARTICLE 25. In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18.

ARTICLE 26. The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

ARTICLE 27. The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 28. In the event of the termination of the mandate hereby conferred upon the Mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by Articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

DONE at London the twenty-fourth day of July, one thousand nine hundred and twenty-two.

ANNEX IV

TEXT OF A "B" MANDATE: TANGANYIKA

BRITISH MANDATE FOR EAST AFRICA¹

The Council of the League of Nations:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German East Africa; and

Whereas, in accordance with the treaty of June 11th, 1891, between Her Britannic Majesty and His Majesty the King of Portugal, the River Rovuma is recognised as forming the northern boundary of the Portuguese possessions in East Africa from its mouth up to the confluence of the River M'Sinje; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations), of the said treaty, a mandate should be conferred upon His Britannic Majesty to administer part of the former colony of German East Africa, and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

ARTICLE 1. The territory over which a mandate is conferred upon His Britannic Majesty (hereinafter called the Mandatory) comprises that part of the territory of the former colony of German East Africa situated to the east of the following line:

[Clauses indicating frontier lines are omitted here.]

ARTICLE 2. [Provisions for Anglo-Belgian Boundary Commission are omitted here.]

¹ League of Nations Document C.449.1(a).M.345(a).1922.VI.; *Official Journal*, III (1922), pp. 865-68; *Terms of League of Nations Mandates*, Republished by the United Nations, October, 1946, No. 9.

ARTICLE 3. The Mandatory shall be responsible for the peace, order and good government of the territory, and shall undertake to promote to the utmost the material and moral well-being and the social progress of its inhabitants. The Mandatory shall have full powers of legislation and administration.

ARTICLE 4. The Mandatory shall not establish any military or naval bases, nor erect any fortifications, nor organise any native military force in the territory except for local police purposes and for the defence of the territory.

ARTICLE 5. The Mandatory:

- (1) shall provide for the eventual emancipation of all slaves and for as speedy an elimination of domestic and other slavery as social conditions will allow;
- (2) shall suppress all forms of slave trade;
- (3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration;
- (4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour;
- (5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

ARTICLE 6. In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.

The Mandatory will promulgate strict regulations against usury.

ARTICLE 7. The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, the acquisition of property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; provided that the Mandatory shall be free to organise essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nation-

ality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate, and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organised in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

ARTICLE 8. The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

ARTICLE 9. The Mandatory shall apply to the territory any general international conventions already existing, or which may be concluded hereafter, with the approval of the League of Nations, respecting the slave trade, the traffic in arms and ammunition, the liquor traffic, and the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation, railways, postal, telegraphic, and wireless communication, and industrial, literary and artistic property.

The Mandatory shall co-operate in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

ARTICLE 10. The Mandatory shall be authorised to constitute the territory into a customs fiscal and administrative union or federation with the adjacent territories under his own sovereignty or control; provided always that the measures adopted to that end do not infringe the provisions of this mandate.

ARTICLE 11. The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

A copy of all laws and regulations made in the course of the year and affecting property, commerce, navigation or the moral and material well-being of the natives shall be annexed to this report.

ARTICLE 12. The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 13. The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for decision.

The present instrument shall be deposited in original in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

DONE at London, the twentieth day of July one thousand nine hundred and twenty-two.

ANNEX V

TEXT OF A "C" MANDATE: JAPANESE MANDATED ISLANDS

MANDATE FOR THE GERMAN POSSESSIONS IN THE PACIFIC OCEAN LYING NORTH OF THE EQUATOR¹

The Council of the League of Nations:

Whereas, by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein the groups of islands in the Pacific Ocean lying north of the Equator; and

Whereas the Principal Allied and Associated Powers agreed that in accordance with Article 22, Part I (Covenant of the League of Nations) of the said Treaty a Mandate should be conferred upon His Majesty the Emperor of Japan to administer the said islands and have proposed that the Mandate should be formulated in the following terms; and

Whereas His Majesty the Emperor of Japan has agreed to accept the Mandate in respect of the said islands and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations:

Confirming the said Mandate, defines its terms as follows:

ARTICLE 1. The islands over which a Mandate is conferred upon His Majesty the Emperor of Japan (hereinafter called the Mandatory) comprise all the former German islands situated in the Pacific Ocean and lying north of the Equator.

ARTICLE 2. The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Empire of Japan, and may apply the laws of the Empire of Japan to the territory, subject to such local modifications as circumstances may require.

¹ L.N. Document 21/31/14E; *Terms of League of Nations Mandates*, Republished by the United Nations, October, 1946, No. 11.

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate.

ARTICLE 3. The Mandatory shall see that the slave trade is prohibited and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4. The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5. Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6. The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4, and 5.

ARTICLE 7. The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

MADE at Geneva the 17th day of December, 1920.

ANNEX VI

CONSTITUTION OF THE PERMANENT MANDATES COMMISSION¹

Approved by the Council on November 29th, 1920

The Council of the League of Nations, in accordance with paragraphs 7 and 9 of Article 22 of the Covenant, namely:

In every case of Mandate, the Mandatory shall render to the Council an Annual Report in reference to the Territory committed to its charge

A permanent Commission shall be constituted to receive and examine the Annual Reports of the Mandatories, and to advise the Council on all matters relating to the observance of the Mandates

has decided as follows:

(a) The Permanent Mandates Commission provided for in Paragraph 9 of Article 22 of the Covenant, shall consist of nine Members.² The majority of the Commission shall be nationals of non-Mandatory Powers.

All the Members of the Commission shall be appointed by the Council and selected for their personal merits and competence. They shall not hold any office which puts them in a position of direct dependence on their Governments while members of the Commission.

The International Labour Organisation shall have the privilege of appointing to the Permanent Commission an expert chosen by itself. This expert shall have the right of attending in an advisory capacity all meetings of the Permanent Commission at which questions relating to labour are discussed.

(b) The Mandatory Powers should send their annual report provided for in Paragraph 7 of Article 22 of the Covenant to the Commission through duly authorised representatives who would be prepared to offer any supplementary explanations or supplementary information which the Commission may request.

¹ Text from League of Nations, *Procès-verbal of the Eleventh Session of the Council Held at Geneva, Fourteenth November to Eighteenth December, 1920*, pp. 90-91. It is practically identical with the text in the *Official Journal*, I (1920), pp. 87-88, with the exception of paragraph (d), which contains an amendment added by the Council on December 1, 1920. See *Procès-verbal of the Eleventh Session*, pp. 15, 19.

² Increased to ten members with the entry of Germany in 1927 (*Official Journal*, VIII [1927], p. 1120). Professor W. E. Rappard was appointed by the Council in 1924 as "extraordinary member" and continued to sit until the last meeting of the Commission in December, 1939.—AUTHOR'S NOTE.

(c) The Commission shall examine each individual report in the presence of the duly authorised representative of the Mandatory Power from which it comes. This representative shall participate with absolute freedom in the discussion of this report.

(d) At the end of this discussion, and after the representative of the Mandatory Power has withdrawn, the Commission shall decide on the wording of the observations which are to be submitted to the Council of the League.

(e) The observations made by the Commission upon each report shall be communicated to the duly authorised representative of the Mandatory Power from which the report comes. This representative shall be entitled to accompany it with any comments which he desires to make.

(f) The Commission shall forward the reports of Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorised representative of the Power which issued the report, if the representative so desires.

(g) When the Council publishes the reports of the Mandatory Powers and the observations of the Permanent Commission, it shall also publish the observations of the duly authorised representatives of those Mandatory Powers which have expressed such a desire.

(h) The Commission, acting in concert with all the duly authorised representatives of the Mandatory Powers, shall hold a Plenary Meeting to consider all the reports as a whole and any general conclusions to be drawn from them. The Commission may also utilise such a Meeting of the representatives of the Mandatory Powers to lay before them any other matters connected with Mandates which in their opinion should be submitted by the Council to the Mandatory Powers and to the other States Members of the League. This Plenary Meeting shall take place either before or after the presentation of the annual reports, as the Commission may think fit.

(i) The Commission shall regulate its own procedure subject to the approval of the Council.

(j) The Commission shall sit at Geneva. It may summon technical experts to act in an advisory capacity for all questions relating to the application of the system of Mandates.

(k) The Members of the Commission shall receive an allowance of 100 gold francs per day during their Meetings.³ Their travelling expenses shall be paid. Expenses of the Commission shall be borne by the League of Nations.

³ Amended on January 10, 1922, to read "70 gold francs per day during their Meetings." L.N., *Official Journal*, III (1922), p. 88.

The Assembly in 1926 provided an allowance of 2,000 Swiss francs to members of the Commission who sat more than thirty days during any one given year. *Ibid.*, VIII (1927), p. IV.—AUTHOR'S NOTE.

ANNEX VII

RULES OF PROCEDURE OF THE PERMANENT MANDATES COMMISSION¹

Whereas, in conformity with Article 22 of the Covenant, the Permanent Mandates Commission is entrusted with the duty of receiving and examining the annual reports which the Mandatory Powers shall render to the Council in reference to the territories committed to their charge, and of advising the Council on all matters relating to the observance of the mandates;

And whereas, by the provisions of the Constitution of the Permanent Mandates Commission, which was approved by the Council on December 1st, 1920, the Commission is instructed to draw up its own Rules of Procedure, subject to the approval of the Council;

Now therefore the Commission adopts the following provisions for its Rules of Procedure, subject to the above-mentioned reservation:

RULE 1. The Permanent Mandates Commission will assemble in ordinary session at least once a year, at the seat of the League of Nations, as a rule in the second half of June.

It will meet for extraordinary sessions at the request of one of its members, on condition that this request, which should be addressed to the Secretary-General and submitted by him to the other members of the Commission, be approved by the majority of these members and by the President of the Council of the League.

The Mandatory Powers and the President of the Council shall be informed, at least one month in advance, of the dates of sessions.

RULE 2. The Permanent Mandates Commission shall consist of nine members, as laid down by paragraph (a) of its Constitution.²

The International Labour Organisation may detail an expert, selected by itself, to sit on the Permanent Commission. This expert shall be entitled to attend, in an advisory capacity, all the meetings of the Permanent Commission at which questions connected with the labour system are discussed.

RULE 3. At any meeting, six members shall constitute a quorum.

All decisions of the Commission shall be adopted by a majority of the votes of the members present at the meeting. In case of equality of votes,

¹ The text is that approved by the Council on January 10, 1922, with amendments approved December 12, 1923, and March 5, 1928. L.N. Document C.404(1).M.295(1). 1921.VI., and *Official Journal*, IX (1928), pp. 497-98.

² By a Council resolution of 1927 the membership of the Commission was increased to ten. See above, Annex VI, n. 2.—AUTHOR'S NOTE.

the Chairman shall have a casting vote. Any statement of views by a minority consisting of one or more members of the Commission shall be transmitted to the Council at the request of the minority.

RULE 4. At the beginning of the first ordinary session of each year, the Commission shall elect from among its members, by secret ballot, a chairman and a vice-chairman for the period of one year. The Mandates Section of the Secretariat of the League will constitute the permanent Secretariat of the Commission.

RULE 5. The Commission shall be put in possession of the annual reports concerning Palestine, Syria, Cameroons and Togoland under French mandate, Tanganyika, South-West Africa, New Guinea and Nauru before May 20th; and those concerning Iraq, Cameroons and Togoland under British mandate, Ruanda-Urundi, Pacific Islands under Japanese mandate and Western Samoa before September 1st of each year.

The Mandatory Powers shall be requested to send one hundred copies of these reports to the Secretariat of the League, and one copy each, at the same time, to the members of the Permanent Mandates Commission, whose names and addresses shall be communicated, with this object in view, to the Governments of these Powers.

RULE 6. The Agenda for each session shall be prepared by the Secretariat of the League, submitted for the approval of the Chairman of the Commission, and communicated to the members, together with the notice convening the Commission.

The Commission may decide, during the course of a session, by a two-thirds majority of the members present, to add any question to the Agenda.

RULE 7. The Chairman shall convene the Commission through the agency of the Secretariat; he shall direct the work at the meetings, ensure that the provisions of the Rules of Procedure are observed, and announce the results of ballots.

The Secretariat shall draw up the minutes of each meeting. These minutes, after being approved by the Commission, shall be kept in a special file. Copies shall be communicated to the Council and to the Mandatory Powers.

The Secretariat shall, as a rule, make all the necessary arrangements for meetings of the Commission. It shall keep the Chairman informed of all questions which may be brought before the Commission for consideration, and shall supply, in due course, all the Members of the Commission with the documents required for the study of the problems on the agenda.

RULE 8. During the ordinary sessions, the Commission shall undertake a separate examination and discussion of each of the annual reports submitted by the Mandatory Powers. The examination and the discussion shall take place, in each case, in the presence of the accredited representative of the Mandatory Power which issued the report.

After this examination, the Commission shall decide upon the form to be given to the observations to be transmitted to the Council of the League. If the Commission is not unanimous, it may present its observations in the form of majority and minority reports. These observations shall be, in every case, communicated to the accredited representative of the Power which issued the report to which they refer. The representative concerned may attach his own remarks.

The Commission shall forward the reports of the Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorised representative of the Power which issued the report, if the representative so desires.

If a majority of the members of the Commission should express the desire, the Commission shall hold a plenary meeting in the presence of the duly authorised representatives, when it has adopted the final terms of its observations on all the reports which it has examined. The Commission may take advantage of the presence of the duly authorised representatives of the Mandatory Powers to bring before them all matters connected with the Mandates which, in its opinion, should be submitted by the Council to the Mandatory Powers and to the other Members of the League.

The meetings, as well as the plenary meeting, shall be public if it be so decided by a majority of the Commission.

RULE 9. French and English shall be the official languages of the Commission.

If a member of the Commission should express the desire, the Secretariat will cause all written documents emanating from the Commission, together with the annual reports of the Mandatory Powers and the remarks of the duly authorised representatives of the latter, to be translated into French when they have been submitted in English, and *vice versa*.

Members of the Commission may speak in French or in English. On the request of a member of the Commission, speeches in French will be summarised in English, and *vice versa*, by an interpreter on the staff of the Secretariat.

RULE 10. Subject to the approval of the Council, these Rules of Procedure may be modified if at least five members of the Commission so decide.

ANNEX VIII

Document I

RULES OF PROCEDURE IN RESPECT OF PETITIONS CONCERNING INHABITANTS OF MANDATED TERRITORIES

Adopted by the Council on January 31st, 1923¹

1. All petitions to the League of Nations by communities or sections of the populations of mandated areas should be sent to the Secretariat of the League of Nations through the mandatory Government concerned; the latter should attach to these petitions such comments as it might think desirable.

2. Any petition from the inhabitants (of mandated areas) received by the Secretariat of the League of Nations through any channel other than the mandatory Government concerned should be returned to the signatories with the request that they should re-submit the petition in accordance with the procedure prescribed above.

3. Any petition regarding the inhabitants of mandated territories received by the League from any source other than that of the inhabitants themselves should be communicated to the Chairman of the Permanent Mandates Commission. The latter should decide which, if any—by reason of the nature of their contents or the authority or disinterestedness of their authors—should be regarded as claiming attention and which should be regarded as obviously trivial. The former should be communicated to the Government of the mandatory Power, which will be asked to furnish, within a maximum period of six months, such comments as it may consider desirable. The Chairman of the Commission should be asked to submit a report upon the others.

4. All petitions sent to the League of Nations in conformity with the prescribed procedure should, together with the comments of the mandatory Powers, be held and accumulated until the next session of the Permanent Mandates Commission.

5. The Commission, after discussing any petitions received, should decide which, if any, accompanied by the observations of the mandatory Power, should be circulated to the Council and the Members of the League. The Minutes of the meeting at which the petitions were discussed should be attached.

¹ L.N. Document C.P.M.38(1); *Official Journal*, IV (1923), p. 300. See also Document II, below, this Annex.

Document II

SUMMARY OF THE PROCEDURE TO BE FOLLOWED IN THE MATTER OF PETITIONS CONCERNING MANDATED TERRITORIES ¹

I. INTERPRETATION OF THE WORD "PETITION"

The Permanent Mandates Commission has, with the approval of the Council, given an interpretation of the word "petition" which makes it possible to include memorials and similar memoranda of every kind concerning the administration of the mandated territories.²

II. SOURCE

The Rules of Procedure provide for petitions from:

1. Communities or sections of the populations of mandated territories;
2. Any source other than that of the inhabitants of the mandated territories themselves.³

III. MODE OF TRANSMISSION

All the petitions referred to in (I) above must be sent to the Secretariat of the League of Nations through the mandatory Government concerned. A petition of this kind received through any channel other than the mandatory Government is returned to the signatories with the request that they should re-submit the petition in accordance with the procedure prescribed above.⁴

IV. ADMISSIBILITY (GENERAL PRINCIPLES)

1. *The Chairman's Powers of Judgment*

The Chairman of the Permanent Mandates Commission, to whom any petition received from a source other than that of the inhabitants of the man-

¹ P.M.C. *Min.* XII (1927), pp. 176-78; L.N. Document C.P.M.558(1). Footnotes are reproduced from the text in the Minutes.

² See Minutes of the Thirty-seventh Session of the Council, resolution of December 9th, 1925, *Official Journal*, February 1926, page 136, and Minutes of the Permanent Mandates Commission, Fifth Session, pages 115-16; Seventh Session, pages 130, 211, 219-20 (C.648.M.237.1925).

³ Rules of Procedure in respect of Petitions concerning Inhabitants of Mandated Territories; adopted by the Council on January 31st, 1923, *Official Journal*, March, 1923, Annex 457, reprinted separately under C.P.M.38(1), (quoted in the following as Rules of Procedure). [Reproduced as Document I, above, this Annex.]

⁴ *Idem*, paragraph 2.

dated territories is communicated, is empowered to decide which, if any—by reason of the nature of their contents or the authority or disinterestedness of their authors—should be regarded as claiming attention and which should be regarded as obviously trivial.⁵

The Commission has laid down certain general rules for the guidance of its Chairman. The latter will accept as worthy of the attention of the Commission all petitions which concern the execution or interpretation of the provisions of the Covenant or the mandates. Such petitions or parts thereof will not, however, be accepted:

- (a) If they contain complaints which are incompatible with the provisions of the Covenant or the mandates;
- (b) If they emanate from an anonymous source;
- (c) If they cover the same ground as was covered by a petition recently communicated to the mandatory Power and do not contain any new information of importance.⁶

Although the Commission has come to the conclusion that there is no need to adopt a special rule regarding the admissibility of petitions which may contain violent or objectionable statements, it has decided to allow the Chairman to take in each case such decisions as may seem to him most appropriate.⁷

2. *The Commission's Powers of Judgment*

In the case of petitions received through the mandatory Governments, the Commission will, if necessary, apply to such petitions the same policy as it has decided to apply (see above) in the case of petitions received from a source other than that of the inhabitants of the mandated territories.⁸

The Permanent Mandates Commission is also guided by the following principles in determining its competence in regard to petitions.⁹

(a) Any petition is regarded as inadmissible if it lays before the Commission a dispute with which the Courts have competence to deal or if its author appeals from a decision regularly pronounced by a Court (properly constituted).

(b) If a petitioner protests against an act of the mandatory Power in regard to which he has no judicial remedy, the Commission will have to consider whether this act is in conformity with the terms of Article 22 of the Covenant and of the mandate in question.

⁵ *Idem*, paragraph 3.

⁶ Minutes of the Seventh Session of the Permanent Mandates Commission, page 133 (C.648.M.237.1925).

⁷ *Idem*, page 133.

⁸ *Idem*, page 134.

⁹ Minutes of the Sixth Session of the Permanent Mandates Commission, pages 168-169 (C.386.M.132.1925).

(c) It may happen that in a legal action the plaintiff against whom the decision has been given may be duly entitled to appeal to the Commission to ask it to determine, not whether the Courts whose decision has gone against him have correctly interpreted the legislation of the mandatory Power, but whether this legislation itself is in conformity with the principles of the Covenant and of the mandate.

(d) It is also possible that the absence of legislation on a given matter may render a petition admissible if the principles of the Covenant and of the mandate called for such legislation and if the Mandatory's failure to legislate on this point may have the result of depriving a petitioner of rights which he could legitimately claim under the terms of the Covenant or the mandate.

V. OBSERVATIONS BY THE MANDATORY POWERS ON PETITIONS

A. As regards petitions submitted to the Permanent Mandates Commission for examination, the mandatory Powers have been requested:

- (a) To indicate, with reference to all points raised in these documents, whether they agree with the petitioners or take some other view of the matter; and
- (b) To state, if necessary, whether they consider that any particular petition has already been fully referred to in their reports or elsewhere.¹⁰

B. Further, the mandatory Powers concerned have been asked to furnish, within a maximum period of six months, such comments as they may consider desirable on petitions received from sources other than that of the inhabitants of mandated territories and referred to them.¹¹

VI. CORRESPONDENCE WITH PETITIONERS AND TRANSMISSION TO THE LATTER OF THE COMMISSION'S OBSERVATIONS

The practice which is actually followed in replying to petitioners has been set out in a memorandum submitted by the Secretary-General to the Council and approved by the latter.¹²

The procedure followed is this:

(a) No communication is sent by the Secretariat to authors of petitions submitted through the mandatory Powers when the petitions are received.

¹⁰ Report on the Seventh Session of the Permanent Mandates Commission, page 2 (C.649.M.238.1925); C.743(1).1925 and Minutes of the Thirty-seventh Session of the Council, *Official Journal*, February, 1926, page 136.

¹¹ Rules of Procedure, paragraph 3. [The Council, by a decision of January 13, 1930, extended this provision (whereby mandatory Governments were to forward their observations not later than six months after receipt of petitions) to petitions from communities or individuals in the territories.]

¹² Minutes of the Fortieth Session of the Council, *Official Journal*, July, 1926, page 878. C.358.1926; C.314.1926.

(b) The Secretariat acknowledges receipt of petitions from a source other than that of the inhabitants of the mandated territories and informs the petitioners that their communication has been forwarded to the Chairman of the Mandates Commission.

In the case of petitions which the latter regards as claiming attention, no further communication is addressed to the petitioners until those petitions have been examined by the Commission.

In other cases, the petitioners are informed of the reasons for which the Chairman has rejected their petitions.¹³

(c) Generally speaking, no communication is sent to the petitioners until the conclusions reached by the Commission with regard to their requests have been approved by the Council.¹⁴

(d) As stated above, the conclusions of the Commission with regard to the petitions examined are submitted to the Council. The latter, if it approves them, generally adopts a resolution to this effect, instructing the Secretary-General to bring them in each case to the notice of the petitioner and the mandatory Power concerned. The Secretary-General transmits the conclusions direct to the petitioners, and in each case sends a copy of his letter to the mandatory Power concerned. The Minutes of the meeting of the Commission at which the petition was examined are generally also forwarded for the petitioner's information.

The question was submitted to the Commission whether the replies should be forwarded in every case through the mandatory Power, and the Commission decided that it would not be desirable to alter the present procedure, which had been followed mainly in order to remove any impression of the exercise of undue influence by the mandatory Power on its decisions.¹⁵ The Commission could always, in any case in which for special reasons such a procedure might clearly seem to be desirable, recommend that replies to petitioners should be forwarded through the mandatory Powers concerned.¹⁶

¹³ Minutes of the Seventh Session of the Permanent Mandates Commission, page 133.

¹⁴ See, however, Minutes of the Sixth Session of the Permanent Mandates Commission, page 180.

¹⁵ Minutes of the Seventh Session of the Permanent Mandates Commission, page 134.

¹⁶ For a decision to this effect, see Minutes of the Sixth Session of the Permanent Mandates Commission, page 180.

ANNEX IX

"B" MANDATES

QUESTIONNAIRE INTENDED TO FACILITATE THE PREPARATION OF THE ANNUAL REPORTS FROM THE MANDATORY POWERS ¹

I. *Slavery*

- (a) 1. What measures are being taken with a view to ensuring the suppression of the slave trade?
2. What results have been obtained?
- (b) 1. Is slavery recognised legally?
2. Does domestic or other slavery still exist? Give statistics.
3. What are the principal causes of slavery (gambling, drink, etc.)?
4. Is the pledging of a person recognised legally?
5. Under what conditions can a slave get his freedom?
6. What measures have been taken, or are being taken, to provide for the emancipation of slaves and to put an end to all slavery, domestic or otherwise?
7. Is there any time-limit fixed for the emancipation of slaves?
If in the affirmative, how long is the period?

II. *Labour*

- (a) 1. Have measures been taken to ensure, in accordance with Part XIII of the Treaty of Versailles, the taking into consideration of conventions or recommendations of International Labour Conferences?
2. Are these conventions or recommendations being carried into effect?
3. By what other provisions is free labour protected?
- (b) 1. What are the measures intended to ensure the prohibition of forced labour for purposes other than essential public works and services and what are the effective results of these measures?
2. For what public works and services is forced native labour required? How is this regulated?

¹ For text of the Provisional Questionnaire drawn up by the Trusteeship Council, see U.N. Document T/44, May 8, 1947. P.M.C. Min. (1922), pp. 81-82.

3. Are there any other forms of forced labour, such as labour in lieu of taxation, maintenance of highways, etc. If in the affirmative how are these regulated?
- (c) 1. How is the recruiting of labour required by private enterprise organised and regulated? Does the Administration participate in this recruiting?
2. Does the Administration allow recruiting in the mandated area of labour for another territory? If so, under what conditions?
3. What compulsory and disciplinary measures are authorised with respect to native labour?
4. What powers has the Administration for controlling labour contracts in order to ensure their loyal fulfilment both on the part of employer and employed, and what powers does it possess to prevent any abuses in this respect?

III. *Arms Traffic*

1. What measures are being adopted to control the traffic in arms and ammunition?
2. What are the statistics relating to imports of arms and ammunition of different categories?

IV. *Trade and Manufacture of Alcohol and Drugs*

1. What steps are being taken to assure the prohibition of abuses of the liquor traffic?
2. How is the campaign against alcoholism organised?
3. What are the effects of these measures (statistics relative to the import and to the local manufacture of alcoholic liquors, etc.)?
4. What are the countries of origin of alcoholic liquor, other than wine and beer, imported into the territory?
5. What measures have been taken to assure the prohibition or regulation of the importation, production and consumption of dangerous drugs?

V. *Liberty of Conscience*

1. What measures are being taken to guarantee liberty of conscience and religion?
2. What restrictions have been laid down for the maintenance of public order and morality?
3. Is there free exercise of religious worship and instruction?
4. If not, what restrictions are there to limit such exercises?
5. What are the results of such restrictions?

VI. *Military Clauses*

1. Has the Mandatory Power established or maintained fortresses or military or naval bases in the mandated territory?
2. What are the forms of native military organisation and instruction?
3. Are there any police forces, independent of the military charged with the defence of the territory?
What is the respective importance of the two forces and the amount spent on each?
4. In what respect is the military organisation of the mandated territory different from that in force in the neighbouring possessions of the Mandatory Power?

VII. *Economic Equality*

1. What provisions are made to secure economic equality as regards:
 - (a) Concessions?
 - (b) Land tenure?
 - (c) Mining rights (in particular, prospecting)?
 - (d) Fiscal regime (direct and indirect taxation)?
 - (e) Customs regulations (imports, transit)?
2. What are the exceptions, if any, in each category?

VIII. *Education*

1. What steps are being taken for the elementary education of the natives of the territory (organisation and statistics)?
Is this education free to all natives, and, if not, in what cases is it free?
2. What steps are being taken to provide for higher education of the natives, such as medical, veterinary and technical?
3. In what languages is instruction given in the different categories of schools?
4. Are Mission schools compelled to submit to certain conditions, and, if so, what?

IX. *Public Health*

1. What steps are being taken in the territory to provide for public health, sanitation, and to combat endemic and epidemic diseases?
2. What provisions are made for medical assistance?
3. What is the actual situation as regards prostitution, and what steps are being taken in this matter?

X. *Land Tenure*

1. What systems of land tenure and forest law exist? How are they legally recognised?
What lands are considered as belonging to the State, and what are regarded as communally owned?
2. What measures are being adopted for the registration of landed property?
3. What are the regulations for the alienation of land in which natives or native communities exercise rights, by virtue of heredity or use?
4. What other measures are being taken to protect the rights and interests of natives and native communities in respect to land (usury, forced sale, etc.)?

XI. *Moral, Social, and Material Welfare*

What are, generally speaking, the measures adopted to ensure the moral, social and material welfare of the natives (measures to maintain the interests, rights, and customs of the natives, their participation in public services, native tribunals, etc.)?

XII. *Public Finances*

The general schedule of receipts from, and expenditures on, the territory, budget system, indication of the nature and assessment of taxes.

XIII. *Demographic Statistics*

Births, marriages (polygamy), deaths, emigration, immigration.

The Permanent Mandates Commission would be grateful to the Mandatory Powers if they would be good enough to add to the annual reports the text of all the legislative and administrative decisions taken with regard to each mandated territory in the course of the past year.

ANNEX X

CONVENTION ON THE REVISION OF THE GENERAL ACT OF BERLIN OF FEBRUARY 26, 1885, AND OF THE GENERAL ACT AND THE DECLARATION OF BRUSSELS OF JULY 2, 1890¹

Signed at St. Germain-en-Laye, September 10, 1919

[Translation]

The United States of America, Belgium, the British Empire, France, Italy, Japan and Portugal;

Whereas the General Act of the African Conference, signed at Berlin on February 26, 1885, was primarily intended to demonstrate the agreement of the Powers with regard to the general principles which should guide their commercial and civilising action in the little known or inadequately organised regions of a continent where slavery and the slave trade still flourished; and

Whereas by the Brussels Declaration of July 2, 1890, it was found necessary to modify for a provisional period of fifteen years the system of free imports established for twenty years by Article 4 of the said Act, and since that date no agreement has been entered into, notwithstanding the provisions of the said Act and Declaration; and

Whereas the territories in question are now under the control of recognised authorities, are provided with administrative institutions suitable to the local conditions, and the evolution of the native populations continues to make progress;

Wishing to ensure by arrangements suitable to modern requirements the application of the general principles of civilisation established by the Acts of Berlin and Brussels,

Have appointed as their Plenipotentiaries:

[The names of plenipotentiaries are omitted.]

¹ M. O. Hudson, *International Legislation*, Vol. I, pp. 344-52. The convention came into force on July 31, 1920.

The two following conventions were also signed at St. Germain-en-Laye on September 10, 1919: (1) Convention on the Control of Trade in Arms and Ammunition (*ibid.*, p. 323), replacing the Brussels Act of July 2, 1890; this convention came into force on March 30, 1921, and was superseded in part by the arms traffic convention signed at Geneva on June 17, 1925. (2) Convention on the Liquor Traffic in Africa (*ibid.*, p. 352), which came into force on July 31, 1920. Previous conventions on the same subject were the General Act of Brussels of July 2, 1890, supplemented by the Brussels Conventions of June 8, 1899, and November 3, 1906.

Who, after having communicated their full powers recognised in good and due form,

Have agreed as follows:

ARTICLE 1. The Signatory Powers undertake to maintain between their respective nationals and those of States, Members of the League of Nations, which may adhere to the present Convention a complete commercial equality in the territories under their authority within the area defined by Article 1 of the General Act of Berlin of February 26, 1885, set out in the Annex hereto, but subject to the reservation specified in the final paragraph of that article.

ANNEX

ARTICLE 1 OF THE GENERAL ACT OF BERLIN OF FEBRUARY 26, 1885

The trade of all nations shall enjoy complete freedom:

(1) In all the regions forming the basin of the Congo and its outlets. This basin is bounded by the watersheds (or mountain ridges) of the adjacent basins, namely, in particular, those of the Niari, the Ogowé, the Shari, and the Nile, on the north; by the eastern watershed line of the affluents of Lake Tanganyika on the east; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries.

(2) In the maritime zone extending along the Atlantic Ocean from the parallel situated in $2^{\circ} 30'$ of south latitude to the mouth of the Logé.

The northern boundary will follow the parallel situated in $2^{\circ} 30'$ from the coast to the point where it meets the geographical basin of the Congo, avoiding the basin of the Ogowé, to which the provisions of the present Act do not apply.

The southern boundary will follow the course of the Logé to its source, and thence pass eastwards till it joins the geographical basin of the Congo.

(3) In the zone stretching eastwards from the Congo Basin, as above defined, to the Indian Ocean from 5° of north latitude to the mouth of the Zambesi in the south, from which point the line of demarcation will ascend the Zambesi to 5 miles above its confluence with the Shiré, and then follow the watershed between the affluents of Lake Nyassa and those of the Zambesi, till at last it reaches the watershed between the waters of the Zambesi and the Congo.

It is expressly recognised that, in extending the principle of free trade to this eastern zone, the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State this principle shall only be applicable in so far as it is approved by such State. But the Powers agree to use their good offices with the Governments established on the African shore of the Indian Ocean for the purpose of obtaining such approval, and in any case of securing the most favourable conditions to the transit (traffic) of all nations.

ART. 2. Merchandise belonging to the nationals of the Signatory Powers, and to those of States, Members of the League of Nations, which may adhere to the present Convention, shall have free access to the interior of the regions specified in Article 1. No differential treatment shall be imposed

upon the said merchandise on importation or exportation, the transit remaining free from all duties, taxes or dues, other than those collected for services rendered.

Vessels flying the flag of any of the said Powers shall also have access to all the coast and to all maritime ports in the territories specified in Article 1; they shall be subject to no differential treatment.

Subject to these provisions, the States concerned reserve to themselves complete liberty of action as to the customs and navigation regulations and tariffs to be applied in their territories.

ART. 3. In the territories specified in Article 1 and placed under the authority of one of the Signatory Powers, the nationals of those Powers, or of States, Members of the League of Nations, which may adhere to the present Convention, shall, subject only to the limitations necessary for the maintenance of public security and order, enjoy without distinction the same treatment and the same rights as the nationals of the Power exercising authority in the territory, with regard to the protection of their persons and effects, with regard to the acquisition and transmission of their movable and real property, and with regard to the exercise of their professions.

ART. 4. Each State reserves the right to dispose freely of its property and to grant concessions for the development of the natural resources of the territory, but no regulations on these matters shall admit of any differential treatment between the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention.

ART. 5. Subject to the provisions of the present chapter, the navigation of the Niger, of its branches and outlets, and of all the rivers, and of their branches and outlets, within the territories specified in Article 1, as well as of the lakes situated within those territories, shall be entirely free for merchant vessels and for the transport of goods and passengers.

Craft of every kind belonging to the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention shall be treated in all respects on a footing of perfect equality.

ART. 6. The navigation shall not be subject to any restriction or dues based on the mere fact of navigation.

It shall not be exposed to any obligation in regard to landing, station, or depôt, or for breaking bulk or for compulsory entry into port.

No maritime or river toll, based on the mere fact of navigation, shall be levied on vessels, nor shall any transit duty be levied on goods on board. Only such taxes or duties shall be collected as may be an equivalent for services rendered to navigation itself. The tariff of these taxes or duties shall not admit of any differential treatment.

ART. 7. The affluents of the rivers and lakes specified in Article 5 shall in all respects be subject to the same rules as the rivers or lakes of which they are tributaries.

The roads, railways or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfections of the water route on certain sections of the rivers and lakes specified in Article 5, their affluents, branches and outlets, shall be considered, in their quality of means of communication, as dependencies of these rivers and lakes, and shall be equally open to the traffic of the nationals of the Signatory Powers and of the States, Members of the League of Nations, which may adhere to the present Convention.

On these roads, railways and canals only such tolls shall be collected as are calculated on the cost of construction, maintenance and management, and on the profits reasonably accruing to the undertaking. As regards the tariff of these tolls, the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention shall be treated on a footing of perfect equality.

ART. 8. Each of the Signatory Powers shall remain free to establish the rules which it may consider expedient for the purpose of ensuring the safety and control of navigation, on the understanding that these rules shall facilitate, as far as possible, the circulation of merchant vessels.

ART. 9. In such sections of the rivers and of their affluents, as well as on such lakes, as are not necessarily utilised by more than one riverain State, the Governments exercising authority shall remain free to establish such systems as may be required for the maintenance of public safety and order, and for other necessities of the work of civilisation and colonisation; but the regulations shall not admit of any differential treatment between vessels or between nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention.

ART. 10. The Signatory Powers recognise the obligation to maintain in the regions subject to their jurisdiction an authority and police forces sufficient to ensure protection of persons and of property and, if necessary, freedom of trade and of transit.

ART. 11. The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.

They will protect and favour, without distinction of nationality or of religion, the religious, scientific or charitable institutions and undertakings created and organised by the nationals of the other Signatory Powers and of States, Members of the League of Nations, which may adhere to the present

Convention, which aim at leading the natives in the path of progress and civilisation. Scientific missions, their property and their collections, shall likewise be the objects of special solicitude.

Freedom of conscience and the free exercise of all forms of religion are expressly guaranteed to all nationals of the Signatory Powers and to those under the jurisdiction of States, Members of the League of Nations, which may become parties to the present Convention. Similarly, missionaries shall have the right to enter into, and to travel and reside in, African territory with a view to prosecuting their calling.

The application of the provisions of the two preceding paragraphs shall be subject only to such restrictions as may be necessary for the maintenance of public security and order, or as may result from the enforcement of the constitutional law of any of the Powers exercising authority in African territories.

ART. 12. The Signatory Powers agree that if any dispute whatever should arise between them relating to the application of the present Convention which cannot be settled by negotiation, this dispute shall be submitted to an arbitral tribunal in conformity with the provisions of the Covenant of the League of Nations.

ART. 13. Except in so far as the stipulations contained in Article 1 of the present Convention are concerned, the General Act of Berlin of February 26, 1885, and the General Act of Brussels of July 2, 1890, with the accompanying Declaration of equal date, shall be considered as abrogated, in so far as they are binding between the Powers which are parties to the present Convention.

ART. 14. States exercising authority over African territories, and other States, Members of the League of Nations, which were parties either to the Act of Berlin or to the Act of Brussels or the Declaration annexed thereto, may adhere to the present Convention. The Signatory Powers will use their best endeavours to obtain the adhesion of these States.

This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the Signatory or adhering States. The adhesion will come into force from the date of its notification to the French Government.

ART. 15. The Signatory Powers will reassemble at the expiration of ten years from the coming into force of the present Convention, in order to introduce into it such modifications as experience may have shown to be necessary.

The present Convention shall be ratified as soon as possible.

Each Power will address its ratification to the French Government, which will inform all the other Signatory Powers.

The ratifications will remain deposited in the archives of the French Government.

The present Convention will come into force for each Signatory Power from the date of the deposit of its ratification, and from that moment that Power will be bound in respect of other Powers which have already deposited their ratifications.

On the coming into force of the present Convention, the French Government will transmit a certified copy to the Powers which, under the Treaties of Peace, have undertaken to accept and observe it. The names of these Powers will be notified to the States which adhere.

IN FAITH WHEREOF the above-named Plenipotentiaries have signed the present Convention.

Done at Saint-Germain-en-Laye, the 10th day of September, 1919, in a single copy, which will remain deposited in the archives of the Government of the French Republic, and of which authenticated copies will be sent to each of the Signatory Powers.

[Signatures omitted.]

ANNEX XI

TREATY OF ALLIANCE BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM AND HIS HIGHNESS THE AMIR OF TRANS-JORDAN^{1, 2}

London, 22nd March, 1946

His Majesty The King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, and His Highness The Amir of Trans-Jordan;

Considering that the Government of the United Kingdom of Great Britain and Northern Ireland have formally declared in the General Assembly of the United Nations Organisation that they intend to recognise the status of Trans-Jordan as a sovereign independent State; and

Desiring to define the relations which will subsist between them in future as independent Sovereigns on the terms of complete freedom, equality and independence, and to consolidate and perpetuate the relations of friendship and good understanding which have hitherto subsisted between them,

Have decided to conclude a treaty of friendship and alliance for this purpose and have appointed as their plenipotentiaries:

His Majesty The King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India (hereinafter referred to as His Majesty The King);

For the United Kingdom of Great Britain and Northern Ireland;

The Right Honourable Ernest Bevin, M.P., His Majesty's Principal Secretary of State for Foreign Affairs;

Arthur Creech Jones, M.P., Parliamentary Under-Secretary of State for the Colonies;

His Highness The Amir of Trans-Jordan;

His Excellency Ibrahim Pasha Hashim, Order of the Nahda, Murassa'a, Order of the Istiglal, First Class, C.B.E., Prime Minister of Trans-Jordan and Minister of Defence;

¹ Great Britain, Foreign Office, Treaty Series No. 32 (1946), Cmd. 6916.

² This treaty has been superseded by a new Treaty of Alliance between the two parties signed on March 15, 1948: Treaty of Alliance between His Majesty in respect of the United Kingdom of Great Britain and Northern Ireland and His Majesty the King of the Hashimite Kingdom of Transjordan, [with Exchanges of Letters], Great Britain, Foreign Office, Transjordan No. 1 (1948), Cmd. 7368. The new treaty and especially the annex (which is an integral part of the treaty) express more fully the principles of equality and reciprocity on which the alliance is based

Who, having communicated their full powers, found in good and due form, have agreed as follows:

ARTICLE 1. His Majesty The King recognises Trans-Jordan as a fully independent State and His Highness The Amir as the sovereign thereof.

There shall be perpetual peace and friendship between His Majesty The King and His Highness The Amir of Trans-Jordan.

There shall be established between the High Contracting Parties a close alliance in consecration of their friendship, their cordial understanding and their good relations and there shall be full and frank consultation between them in all matters of foreign policy which may affect their common interests.

Each of the High Contracting Parties undertakes not to adopt in foreign countries an attitude which is inconsistent with the alliance or might create difficulties for the other party thereto.

ARTICLE 2. Each High Contracting Party will be represented at the Court of the other High Contracting Party by a diplomatic representative duly accredited.

ARTICLE 3. It is understood between the High Contracting Parties that responsibility for the maintenance of internal order in Trans-Jordan and, subject to the provisions of Article 5 below, for the defence of Trans-Jordan from external aggression rests with His Highness The Amir of Trans-Jordan.

ARTICLE 4. Should a dispute arise with a third State, the continuance of which is likely to endanger the maintenance of international peace and security, the High Contracting Parties will, first of all, concert together to seek a solution by peaceful means as provided in Article 33 of the Charter of the United Nations.

ARTICLE 5. Should either High Contracting Party, notwithstanding the provisions of Article 4 of the present Treaty, become involved in hostilities, as a result of armed attack by a third party, the other High Contracting Party will, subject always to the provisions of Article 12 of the present Treaty, immediately come to his aid as a measure of collective self-defence. In the event of an imminent menace of hostilities the High Contracting Parties will immediately concert together the necessary measures of defence.

ARTICLE 6. In order to facilitate the discharge of the mutual obligations under Article 5 above, the High Contracting Parties have agreed to the provisions set forth in the Annex to the present Treaty.

ARTICLE 7. His Majesty The King will make every endeavour to obtain for His Highness's Government the services of any experts or officials with technical qualifications of whom Trans-Jordan may stand in need.

ARTICLE 8.—1. All obligations and responsibilities devolving on His Majesty The King in respect of Trans-Jordan in respect of any international

instrument which is not legally terminated should devolve on His Highness The Amir of Trans-Jordan alone, and the High Contracting Parties will immediately take such steps as may be necessary to secure the transfer to His Highness The Amir of these responsibilities.

2. Any general international treaty, convention or agreement which has been made applicable to Trans-Jordan by His Majesty The King (or by his Government in the United Kingdom) as mandatory shall continue to be observed by His Highness The Amir until His Highness The Amir (or his Government) becomes a separate contracting party thereto or the instrument in question is legally terminated in respect of Trans-Jordan.

ARTICLE 9.—1. The High Contracting Parties will open negotiations for a Commercial and Establishment Agreement as soon as practicable.

2. Until the conclusion of the Agreement referred to in paragraph 1, or until the expiry of two years from the date of signature of the present Treaty, whichever is the earlier, each High Contracting Party will maintain in relation to the nationals and commerce of the other the régime applying at the date of signature of the Treaty; provided that neither High Contracting Party will extend to the nationals or commerce of the other treatment less favourable in any respect than that which he accords to the nationals and commerce of the most favoured foreign country.

3. The provisions of the second paragraph of this Article apply to the colonies, overseas territories and protectorates of His Majesty The King and the territories administered by His Majesty's Government in the United Kingdom under mandate or trusteeship.

4. The High Contracting Parties agree that the provisions of the second paragraph of this Article with regard to the grant of the treatment of the most favoured foreign country shall not extend to—

- (1) Any special customs privileges which at the date of signature of this Treaty His Highness The Amir accords to goods produced or manufactured in any territory which in 1914 was wholly included in Asiatic Turkey or Arabia provided that such privileges are not accorded to any other foreign country, or
- (2) customs privileges granted by one of the High Contracting Parties to a third country in virtue of a Customs Union which has already been or may hereafter be concluded.

ARTICLE 10. It is agreed by the High Contracting Parties that commercial concessions granted in respect of Trans-Jordan territory prior to the signature of this Treaty shall continue to be valid for the periods specified in their texts.

ARTICLE 11. On the coming into force of the present Treaty the Agreement between His Majesty The King and His Highness The Amir dated the

20th February, 1928,¹ and subsequently revised by further Agreements dated the 2nd June, 1934,² and the 19th July, 1941,³ shall cease to have effect.

ARTICLE 12. Nothing in the present Treaty is intended to or shall in any way prejudice the rights and obligations which devolve, or may devolve, upon either of the High Contracting Parties under the Charter of the United Nations or, save as may result from the provisions of Articles 8 and 11, under any other international agreements, conventions or treaties.

ARTICLE 13. Should any difference arise relative to the application or the interpretation of the present Treaty, and should the High Contracting Parties fail to settle such difference by direct negotiation, the difference shall be referred to the International Court of Justice unless the parties agree to another mode of settlement.

ARTICLE 14. The present Treaty shall be ratified and shall come into force upon the exchange of instruments of ratification, which shall take place as soon as possible.

The present Treaty shall remain in force for a period of twenty-five years from the date of its coming into force, and thereafter it shall remain in force until the expiry of one year after a notice of termination has been given by one High Contracting Party to the other through the diplomatic channel.

IN WITNESS WHEREOF the above-named plenipotentiaries have signed the present Treaty and affixed thereto their seals.

Done in duplicate in London, this twenty-second day of March, 1946, in the English and Arabic languages, both texts being equally authentic.

(L.S.) ERNEST BEVIN

(L.S.) A. CREECH JONES

(L.S.) IBRAHIM HASHIM

ANNEX

ARTICLE 1. His Majesty The King may station armed forces in Trans-Jordan in places where they are stationed at the date of signature of the present Treaty, and in such other places as may be agreed upon, and His Highness The Amir will provide all the facilities necessary for their accommodation and maintenance and the storage of their ammunition and supplies, including the lease of any land required. Any private rights on such land will, if necessary, be expropriated.

ARTICLE 2. His Highness The Amir of Trans-Jordan will grant facilities at all times for the movement and training of the armed forces of His Majesty The King, and for the transport of the supplies of fuel, ordnance, am-

¹ "Treaty Series No. 7 (1930)," Cmd. 3488.

² "Treaty Series No. 34 (1935)," Cmd. 4999.

³ Cmd. 6323.

munition and other materials required by these forces, by air, road, railway, water-way and pipeline and through the ports of Trans-Jordan.

ARTICLE 3. *The armed forces of His Majesty The King will have the right to use their own systems of signal communication, including wireless.*

ARTICLE 4. His Highness The Amir of Trans-Jordan will safeguard, maintain and develop as necessary in consultation with the Government of the United Kingdom the ports and lines of communication in and across Trans-Jordan, required for the free movement and maintenance of His Majesty's armed forces, and will call upon His Majesty's assistance as may be required for this purpose.

ARTICLE 5. His Majesty The King will reimburse to His Highness The Amir all expenditure to which His Highness's Government is put in connection with the provision of the facilities mentioned in Articles 1, 2 and 4 of this Annex and will repair or pay compensation for any damage arising from actions by members of His Majesty's armed forces other than damage caused in military operations undertaken in accordance with Article 5 of this Treaty as a result of an attack on Trans-Jordan.

ARTICLE 6. Pending the conclusion of an agreement between the High Contracting Parties defining in detail the jurisdictional and fiscal immunities of members of the forces of His Majesty The King in Trans-Jordan, they will continue to enjoy the immunities which are accorded to them at present.

ARTICLE 7. No demand will be made for the payment by His Majesty The King of any Trans-Jordan taxation in respect of immovable property leased or owned by His Majesty or in respect of his movable property, including customs duty on goods imported or exported by or on behalf of His Majesty.

ARTICLE 8. His Majesty The King will afford financial assistance to His Highness The Amir in meeting the cost of the military units of the Amir's forces which are required to ensure the purposes of Article 5 of the Treaty. The strength of such units will be agreed upon annually by the High Contracting Parties, and His Highness The Amir will enable His Majesty's representative in Trans-Jordan to ascertain that the funds in question are expended for the purpose for which they are issued.

ARTICLE 9. In view of the desirability of identity in training and methods between the Trans-Jordan and British armies:

(1) His Majesty The King will provide any British officers whose services are required to ensure the efficiency of the military units of the Amir's forces.

(2) His Majesty The King will (a) afford all possible facilities to His Highness The Amir of Trans-Jordan for the military and aeronautical instruction of Trans-Jordan officers at schools of instruction maintained for His Majesty's forces, and (b) provide arms, ammunition, equipment and

aircraft and other war material for the forces of His Highness The Amir of Trans-Jordan.

(3) His Highness The Amir will (a) meet the cost of instruction and equipment referred to in paragraph (2), (b) ensure that the armament and essential equipment of his forces shall not differ in type from those of the forces of His Majesty The King, (c) send any personnel of his forces, that may be sent abroad for training, to military schools, colleges and training centres maintained for His Majesty's forces.

ARTICLE 10. At the request of either of them the High Contracting Parties will consult together at any time to consider whether it is desirable to introduce by agreement any amendments to the provisions of this Annex designed to give fuller effect to its purposes.

E. B.

A. C. J.

I. H.

ANNEX XII

CHARTER OF THE UNITED NATIONS ¹

CHAPTER XI.—DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

ARTICLE 73. Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

ARTICLE 74. Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

¹ Signed at San Francisco, June 26, 1945. United States, *Treaty Series* 993 (1946), pp. 18-21.

CHAPTER XII.—INTERNATIONAL TRUSTEESHIP SYSTEM

ARTICLE 75. The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

ARTICLE 76. The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

ARTICLE 77.—1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

ARTICLE 78. The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

ARTICLE 79. The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

ARTICLE 80.—1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

ARTICLE 81. The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

ARTICLE 82. There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

ARTICLE 83.—1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

ARTICLE 84. It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

ARTICLE 85.—1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII.—THE TRUSTEESHIP COUNCIL

Composition

ARTICLE 86.—I. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

ARTICLE 87. The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

ARTICLE 88. The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

ARTICLE 89.—I. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

ARTICLE 90.—1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

ARTICLE 91. The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned

ANNEX XIII

TEXTS OF THE TRUSTEESHIP AGREEMENTS APPROVED BY THE GENERAL ASSEMBLY ON DECEMBER 13, 1946, AND NOVEMBER 1, 1947

(1)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF TANGANYIKA¹

*Approved by the General Assembly of the United Nations at the Sixty-Second
Plenary Meeting of Its First Session on 13 December 1946*

Whereas the territory known as Tanganyika has been administered in accordance with Article 22 of the Covenant of the League of Nations under a Mandate conferred on His Britannic Majesty; and

Whereas Article 75 of the United Nations Charter, signed at San Francisco on 26 June 1945, provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements; and

Whereas under Article 77 of the said Charter the international trusteeship system may be applied to territories now held under Mandate; and

Whereas His Majesty has indicated his desire to place Tanganyika under the said international trusteeship system; and

¹ U.N. Document T/8, March 25, 1947, pp. 18-25. The present document has been compared with the June (Cmd. 6840) and October (Cmd. 6935 and A/152) drafts of the agreement and variations in these texts are explained in author's footnotes to the present text (see also below, this note). (The Cmd. 6935 draft was a revision of the June draft printed in October before the circulation of draft A/152 by the United Nations. It is of interest in this comparison mainly in connection with Articles 9 and 10.)

Points at which changes were made during the discussions in the Assembly in the texts of the various trusteeship agreements are indicated in this and the following texts by an *asterisk*.

Such changes were made in the Tanganyika draft as follows: (1) the omission of two clauses from the preamble (see author's footnotes 2 and 3); (2) the addition of the word "free" in Article 6; (3) the restoration of the original text (i.e., the June draft as revised by Cmd. 6935) of Articles 9 and 10 and the addition to the latter of the final proviso (see footnotes 9 and 10).

Passages in italics in the Tanganyika text indicate changes made in the text from June to October, i.e., prior to the Assembly discussions. Similar changes were made in texts for the Cameroons and Togoland. But see also footnotes for complete indication of such changes.

NOTE: All footnotes to the texts of the trusteeship agreements have been added by the author.

Whereas in accordance with Articles 75 and 77 of the said Charter, the placing of a territory under the international trusteeship system is to be effected by means of a Trusteeship Agreement; **

Now, therefore, the General Assembly of the United Nations ** hereby resolves to approve the following terms of trusteeship for Tanganyika.

ARTICLE 1. The Territory to which this Agreement applies comprises that part of East Africa lying within the boundaries defined by Article 1 of the British Mandate for East Africa, and by the Anglo-Belgian Treaty of 22 November 1934, regarding the boundary between Tanganyika and Ruanda-Urundi.

ARTICLE 2. His Majesty is hereby designated as Administering Authority for Tanganyika, the responsibility for the administration of which will be undertaken by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 3.⁴ The Administering Authority undertakes to administer Tanganyika in such a manner as to achieve the basic objectives of the international trusteeship system laid down in Article 76 of the United Nations Charter. *The Administering Authority further undertakes to collaborate fully with the General Assembly of the United Nations and the Trusteeship Council in the discharge of all their functions as defined in Article 87 of the United Nations Charter, and to facilitate any periodic visits to Tanganyika which they may deem necessary, at times to be agreed upon with the Administering Authority.*

ARTICLE 4. The Administering Authority shall be responsible (a) for the peace, order, good government and defence of Tanganyika, and (b) for ensuring that it shall play its part in the maintenance of international peace and security.

ARTICLE 5.⁵ For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary, the Administering Authority:

- (a) shall have full powers of legislation, administration, and jurisdiction in Tanganyika, *subject to the provisions of the United Nations Charter and of this agreement;*

² Continuing from this point, the original June draft (Cmd. 6840) and the October 30 draft (A/152) read, respectively: "and by Articles 79, 83 and 85 of the said Charter it is provided that the terms of trusteeship are to be agreed upon by the States directly concerned and approved by the United Nations;"—"the procedure for the approval of the terms of which by the United Nations is prescribed by Articles 79, 83 and 85 of the said Charter," etc.

³ Continuing from this point, the original June and October drafts read, respectively: "in accordance with Article 85 of the said Charter, having satisfied itself that the agreement of the states directly concerned, including the Mandatory Power, has been obtained in accordance with Article 79 of the said Charter," etc.—"in accordance with Article 85 of the said Charter, having satisfied itself that the requirements of Article 79 of the said Charter have been complied with," etc.

⁴ Words in italics occur in the October but not in the June draft. Following the words "United Nations Charter" in the first sentence, the June draft read: "and to collaborate fully with the Trusteeship Council in the discharge of all the Council's functions as defined in Article 87 of the United Nations Charter and in this agreement."

⁵ Italics indicate October draft additions to the June draft.

- (b) shall be entitled to constitute Tanganyika into a customs, fiscal or administrative union or federation with adjacent territories under his sovereignty or control, and to establish common services between such territories and Tanganyika where such measures are not inconsistent with the basic objectives of the international trusteeship system *and with the terms of this Agreement*;
- (c) and shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ his own forces in Tanganyika and to take all such other measures as are in his opinion necessary for the defence of Tanganyika and for ensuring that the territory plays its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities and assistance from Tanganyika in carrying out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within Tanganyika.

ARTICLE 6.⁶ * *The Administering Authority shall promote the development of free political institutions suited to Tanganyika. To this end, the Administering Authority shall assure to the inhabitants of Tanganyika a progressively increasing share in the administrative and other services of the Territory; shall develop the participation of the inhabitants of Tanganyika in advisory and legislative bodies and in the government of the Territory, both central and local, as may be appropriate to the particular circumstances of the Territory and its peoples; and shall take all other appropriate measures with a view to the political advancement of the inhabitants of Tanganyika in accordance with Article 76 (b) of the United Nations Charter.*

ARTICLE 7.⁷ The Administering Authority undertakes to apply in Tanganyika the provisions of any international conventions and recommendations *already existing or hereafter drawn up by the United Nations or by the specialized agencies referred to in Article 57 of the Charter, which may be appropriate to the particular circumstances of the Territory and which would conduce to the achievement of the basic objectives of the international trusteeship system.*

ARTICLE 8.⁸ In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into considera-

⁶ With the exception of the word "free," which was added in the final text, this article is an October redraft of the substance of Article 6 of the June draft, which read as follows: "The Administering Authority shall take measures to assure to the inhabitants of Tanganyika a progressively increasing share in the administrative and other services and in the government of the territory, both central and local, and to develop existing means for the expression of local opinion, with a view to the political development of the inhabitants of Tanganyika towards the attainment of the objective prescribed in Article 76 (b) of the United Nations Charter."

⁷ Italics indicate October draft additions to the June draft, which closed with the words—"Article 57 of the United Nations Charter, the application of which would in his opinion conduce" etc.

⁸ Italics indicate October draft additions to the June draft.

tion native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or *natural resources* may be transferred, except between natives, save with the *previous* consent of the competent public authority. No real rights over native land or *natural resources* in favour of non-natives may be created except with the same consent.

ARTICLE 9.⁹ * Subject to the provisions of Article 10 of this Agreement, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, *industrial* and commercial matters for all Members of the United Nations and their nationals and to this end:

- (a) shall ensure the same rights to all nationals of Members of the United Nations as to his own nationals in respect of entry into and residence in Tanganyika, freedom of transit and navigation, *including freedom of transit and navigation by air*, acquisition of property both movable and immovable, the protection of person and property, and the exercise of professions and trades;
- (b) shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of the natural resources of Tanganyika and shall not grant concessions having the character of a general monopoly;
- (c) shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.

The rights conferred by this Article on nationals of Members of the United Nations apply equally to companies and associations controlled by such nationals and organized in accordance with the law of any Member of the United Nations.

ARTICLE 10.¹⁰ * Measures taken to give effect to Article 9 of this Agreement shall be subject always to the overriding duty of the Administering

⁹ Italicized text in Article 9 indicates October draft (Cmd. 6935) additions to the June draft.

In the text of the trusteeship agreement as first circulated by the United Nations (A/152, October 30, 1946), Articles 9 and 10 were replaced in a last-minute change by the following short text:

"The Administering Authority shall take all necessary steps to ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals and also equal treatment for the latter in the administration of justice, subject always to his over-riding duty, in accordance with Article 76 of the United Nations Charter, to promote the political, economic, social and educational advancement of the inhabitants of Tanganyika to carry out the other basic objectives of the International Trusteeship System, and to maintain peace, order and good government."

During the discussion in the Assembly this short article was deleted by the British Government and the original texts of Articles 9 and 10 as they appeared in Cmd. 6935 were restored, with the variations indicated (see footnote 10).

¹⁰ The italicized text in Article 10 indicates variations in form or substance from the June draft or the text in Cmd. 6935. The final paragraph of the June draft read: "(c) to establish, under conditions of proper public control, such other monopolies or undertakings having in them an element of monopoly as appear to him to be in the interests of the economic advancement of the inhabitants of Tanganyika." This paragraph was amended slightly in Cmd. 6935 to read: "(c) where the interests of the economic advancement of the inhabitants of Tanganyika may require it, to establish, or permit to

Authority in accordance with Article 76 of the United Nations Charter to promote the political, economic, social and educational advancement of the inhabitants of Tanganyika, to carry out the other basic objectives of the international trusteeship system, and to maintain peace, order and good government. The Administering Authority shall in particular be free:

- (a) to organize essential public services and works on such terms and conditions as he thinks just;
- (b) to create monopolies of a purely fiscal character in order to provide Tanganyika with the fiscal resources which seem best suited to local requirements, or otherwise to serve the interests of the inhabitants of Tanganyika;
- (c) *where the interests of the economic advancement of the inhabitants of Tanganyika may require it*, to establish, or permit to be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control; *provided that, in the selection of agencies to carry out the purposes of this paragraph, other than agencies controlled by the Government or those in which the Government participates, the Administering Authority shall not discriminate on grounds of nationality against Members of the United Nations or their nationals.

ARTICLE 11.¹¹ Nothing in this Agreement shall entitle any Member of the United Nations to claim for itself or for its nationals, companies and associations *the benefits of Article 9 of this Agreement in any respect in which it does not give to the inhabitants, companies and associations of Tanganyika equality of treatment with the nationals, companies and associations of the state which it treats most favourably.*

ARTICLE 12.¹² *The Administering Authority shall, as may be appropriate to the circumstances of Tanganyika, continue and extend a general system of elementary education designed to abolish illiteracy and to facilitate the vocational and cultural advancement of the population, child and adult, and shall similarly provide such facilities as may prove desirable and practicable in the interests of the inhabitants for qualified students to receive secondary and higher education, including professional training.*

ARTICLE 13.¹³ The Administering Authority shall ensure in Tanganyika complete freedom of conscience and, so far as is consistent with the require-

be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control."

The last clause of paragraph (c), marked with an asterisk, was added during the discussions in the Assembly.

¹¹ Italicized text in Article 11 indicates October text variations from the June draft, which read: "Nothing in this agreement shall of itself entitle any member of the United Nations to claim for itself or for its nationals, companies or associations in Tanganyika the application of a more advantageous regime than that member itself grants in its own territory to Tanganyika and its inhabitants."

¹² This article was added in the October draft.

¹³ Italics indicate October variations in, and additions to, the June draft.

ments of public order and morality, freedom of religious teaching and the free exercise of all forms of worship. Subject to the provisions of Article 8 of this Agreement and the local law, missionaries who are nationals of Members of the United Nations shall be free to enter Tanganyika and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools and hospitals in the territory. The provisions of this Article shall not, however, affect the right and duty of the Administering Authority to exercise such controls as he may consider necessary for the maintenance of peace, order and good government and for the educational advancement of the inhabitants of Tanganyika, and to take all measures required for such control.

ARTICLE 14.¹⁴ *Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of Tanganyika freedom of speech, of the press, of assembly, and of petition.*

ARTICLE 15.¹⁵ *The Administering Authority may arrange for the co-operation of Tanganyika in any regional advisory commission, regional technical organization or other voluntary association of states, any specialized international bodies, public or private, or other forms of international activity not inconsistent with the United Nations Charter.*

ARTICLE 16.¹⁶ *The Administering Authority shall make to the General Assembly of the United Nations an annual report on the basis of a questionnaire drawn up by the Trusteeship Council in accordance with Article 88 of the United Nations Charter. Such reports shall include information concerning the measures taken to give effect to suggestions and recommendations of the General Assembly and the Trusteeship Council. The Administering Authority shall designate an accredited representative to be present at the sessions of the Trusteeship Council at which the reports of the Administering Authority with regard to Tanganyika are considered.*

ARTICLE 17.¹⁷ *Nothing in this Agreement shall affect the right of the Administering Authority to propose, at any future date, the amendment of this Agreement for the purpose of designating the whole or part of Tanganyika as a strategic area or for any other purpose not inconsistent with the basic objectives of the international trusteeship system.*

ARTICLE 18. *The terms of this Agreement shall not be altered or amended except as provided in Article 79 and Article 83 or 85, as the case may be, of the United Nations Charter.*

¹⁴ This article was added in the October draft.

¹⁵ This article was added in the October draft.

¹⁶ Italics indicate additions in the October draft; but the latter, in the second sentence, used the phrase "to the Trusteeship Council" instead of "and the Trusteeship Council."

¹⁷ The October and June texts of this article were identical except for the inclusion, after the words "strategic area" in the June draft, of the phrase "in accordance with Articles 82 and 83 of the United Nations Charter."

ARTICLE 19. If any dispute whatever should arise between the Administering Authority and another Member of the United Nations relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice provided for in Chapter XIV of the United Nations Charter.

(2)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF THE
CAMEROONS UNDER BRITISH ADMINISTRATION¹

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF TOGO-
LAND UNDER BRITISH ADMINISTRATION²

*Approved by the General Assembly of the United Nations at the Sixty-
Second Plenary Meeting of Its First Session on 13 December 1946*

[The Tanganyika trusteeship agreement served throughout as a model for the trusteeship agreements for the Cameroons and Togoland under British administration. These texts differ from the Tanganyika agreement only in the following respects:]

CAMEROONS UNDER BRITISH ADMINISTRATION

ARTICLE 1. The Territory to which this Agreement applies comprises that part of the Cameroons lying to the west of the boundary defined by the Franco-British Declaration of 10 July 1919, and more exactly defined in the Declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the Cameroons under French Mandate which was confirmed by the exchange of Notes between His Majesty's Government in the United Kingdom and the French Government of 9 January 1931. This line may, however, be slightly modified by mutual agreement between His Majesty's Government in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interests of the inhabitants.

TOGOLAND UNDER BRITISH ADMINISTRATION

ARTICLE 1. The Territory to which this Agreement applies comprises that part of Togoland lying to the west of the boundary defined by the Franco-British Declaration of 10 July 1919, as delimited and modified by the Protocol

¹ U.N. Document T/8, March 25, 1947, pp. 10-17. The modifications made during the Assembly discussions were the same as those for Tanganyika.

² *Ibid.*, pp. 2-9.

of 21 October 1929, executed by the Commissioners appointed in the execution of Article 2 (1) of the said Declaration.

CAMEROONS AND TOGOLAND UNDER BRITISH ADMINISTRATION

ARTICLE 5. For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary, the Administering Authority:

- (a) shall have full powers of legislation, administration and jurisdiction in the Territory, and shall administer it in accordance with his own laws as an integral part of his territory with such modification as may be required by local conditions and subject to the provisions of the United Nations Charter and of this Agreement;

[The rest of the article is identical with paragraphs (b) and (c) of the Tanganyika text.]

ARTICLE 6. [Identical with Article 6 of the Tanganyika text except for the addition of the following sentence at the end of the article:] "In considering the measures to be taken under this Article the Administering Authority shall, in the interests of the inhabitants, have special regard to the provisions of Article 5 (a) of this Agreement."

(3)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF THE CAMEROONS UNDER FRENCH ADMINISTRATION¹

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF TOGOLAND UNDER FRENCH ADMINISTRATION²

Approved by the General Assembly of the United Nations at the Sixty-Second Plenary Meeting of Its First Session on 13 December 1946

[The texts of the agreements for the French Cameroons and Togoland are identical in substance.]

³ * Whereas the territory known as the Cameroons lying to the east of the line agreed upon in the Declaration signed on 10 July 1919 has been under

¹ This is the revised English translation as circulated in U.N. Document T/8, March 25, 1947 (pp. 37-44), which differs verbally from the translation in Document A/155/Rev. 2, December 12, 1946 (as corrected on March 19, 1947).

Points at which changes were made during the discussions in the Assembly in the texts of the two agreements, are indicated by an *asterisk*. Such changes were made in the preamble and in Articles 5, 9, and 12 of the text. See author's footnotes to the text.

² U.N. Document T/8, March 25, 1947, pp. 29-36.

³ For the original preamble, see Document A/155, October 22, 1946. The third paragraph of the present text of the preamble was followed, in the October 22 draft, by

French administration in accordance with the mandate defined under the terms of the instrument of 20 July 1922; and

Whereas, in accordance with Article 9 of that instrument, this part of the Cameroons has since then been "administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the provisions" of the mandate, and it is of importance, in the interests of the population of the Cameroons, to pursue the administrative and political development of the territories in question, in such a way as to promote the political, economic and social advancement of the inhabitants in accordance with Article 76 of the Charter of the United Nations; and

Whereas France has indicated her desire to place under trusteeship in accordance with Articles 75 and 77 of the said Charter that part of the Cameroons which is at present administered by her; and

Whereas Article 85 of the said Charter provides that the terms of trusteeship are to be submitted for approval by the General Assembly;

Now, therefore, the General Assembly of the United Nations approves the following terms of trusteeship for the said Territory.

ARTICLE 1. The Territory to which the present Trusteeship Agreement applies comprises that part of the Cameroons lying to the east of the boundary defined by the Franco-British Declaration of 10 July 1919.

ARTICLE 2. The French Government in its capacity of Administering Authority for this Territory under the terms of Article 81 of the Charter of the United Nations, undertakes to exercise therein the duties of trusteeship as defined in the said Charter, to promote the basic objectives of the trusteeship system laid down in Article 76 and to collaborate fully with the General Assembly and the Trusteeship Council in the discharge of their functions as defined in Articles 87 and 88.

Accordingly the French Government undertakes:

1. To make to the General Assembly of the United Nations the annual report provided for in Article 88 of the Charter, on the basis of the questionnaire drawn up by the Trusteeship Council in accordance with the said Article, and to attach to that report such memoranda as may be required by the General Assembly or the Trusteeship Council.

To include in that report information relating to the measures taken to give effect to the suggestions and recommendations of the General Assembly or of the Trusteeship Council.

To appoint a representative and, where necessary, qualified experts to attend the meetings of the Trusteeship Council or of the General Assembly at which the said reports and memoranda will be examined.

the following paragraph: "Whereas the terms of the trusteeship agreement for this territory have been approved by the States directly concerned and in accordance with Article 79 of the Charter, and,"

2. To appoint a representative and, where necessary, qualified experts to participate, in consultation with the General Assembly or the Trusteeship Council, in the examination of petitions received by those bodies.
3. To facilitate such periodic visits to the Territory as the General Assembly or the Trusteeship Council may decide to arrange, to decide jointly with these bodies the dates on which such visits shall take place, and also to agree jointly with them on all questions concerned with the organization and accomplishment of these visits.
4. To render general assistance to the General Assembly or the Trusteeship Council in the application of these arrangements, and of such other arrangements as these bodies may take in accordance with the terms of the present Agreement.

ARTICLE 3. The Administering Authority shall be responsible for the peace, order and good government of the Territory.

It shall also be responsible for the defence of the said Territory and ensure that it shall play its part in the maintenance of international peace and security.

ARTICLE 4. For the above-mentioned purposes and in order to fulfill its obligations under the Charter and the present Agreement, the Administering Authority:

A. Shall

1. Have full powers of legislation, administration and jurisdiction in the Territory and shall administer it in accordance with French law as an integral part of the French Territory, subject to the provisions of the Charter and of this Agreement.
2. Be entitled, in order to ensure better administration, with the consent of the territorial representative Assembly, to constitute this Territory into a customs, fiscal or administrative union or federation with adjacent territories under its sovereignty or control and to establish common services between such territories and the Trust Territory, provided that such measures should promote the objectives of the international trusteeship system.

B. May

1. Establish on the Territory military, naval or air bases, station national forces and raise volunteer contingents therein.
2. Within the limits laid down in the Charter take all measures of organization and defence appropriate for ensuring:
 - (a) the participation of the Territory in the maintenance of international peace and security,
 - (b) the respect for obligations concerning the assistance and facilities to be given by the Administering Authority to the Security Council,
 - (c) the respect for internal law and order,
 - (d) the defence of the Territory within the framework of the special agreements for the maintenance of international peace and security.

ARTICLE 5.⁴* The Administering Authority shall take measures to ensure to the local inhabitants a share in the administration of the Territory by the development of representative democratic bodies, and in due course, to arrange appropriate consultations to enable the inhabitants freely to express an opinion on their political regime and ensure the attainment of the objectives prescribed in Article 76 (b) of the Charter.

ARTICLE 6. The Administering Authority undertakes to maintain the application to the Territory, of the international agreements and conventions which are at present in force there, and to apply therein any conventions and recommendations made by the United Nations or the specialized agencies referred to in Article 57 of the Charter, the application of which would be in the interests of the population and consistent with the basic objectives of the trusteeship system and the terms of the present Agreement.

ARTICLE 7. In framing laws relating to the holding or transfer of land, the Administering Authority shall, in order to promote the economic and social progress of the native population, take into consideration local laws and customs.

No land belonging to a native or to a group of natives may be transferred, except between natives, save with the previous consent of the competent public authority, who shall respect the rights and safeguard the interests, both present and future, of the natives. No real rights over native land in favour of non-natives may be created except with the same consent.

ARTICLE 8. Subject to the provisions of the following Article, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all States Members of the United Nations and their nationals and to this end:

1. Shall grant to all nationals of Members of the United Nations freedom of transit and navigation, including freedom of transit and navigation by air, and the protection of person and property, subject to the requirements of public order, and on condition of compliance with the local law.
2. Shall ensure the same rights to all nationals of Members of the United Nations as to his own nationals in respect of entry into and residence in the Territory, acquisition of property, both movable and immovable, and the exercise of professions and trades.
3. Shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of the natural resources of the Territory, and shall not grant concessions having the character of a general monopoly.
4. Shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.

* The word "freely" was added to this article during the Assembly discussions.

The rights conferred by this Article on the nationals of Members of the United Nations apply equally to companies and associations controlled by such nationals and formed in accordance with the law of any Member of the United Nations.

Nevertheless, pursuant to Article 76 of the Charter, such equal treatment shall be without prejudice to the attainment of the trusteeship objectives as prescribed in the said Article 76 and particularly in paragraph (b) of that Article.

Should special advantages of any kind be granted by a Power enjoying the equality of treatment referred to above to another Power, or to a territory whether self-governing or not, the same advantages shall automatically apply reciprocally to the Trust Territory and to its inhabitants, especially in the economic and commercial field.

ARTICLE 9.⁵ * Measures taken to give effect to the preceding article of this Agreement shall be subject to the overriding duty of the Administering Authority, in accordance with Article 76 of the Charter, to promote the political, economic, social and educational advancement of the inhabitants of the Territory, to carry out the other basic objectives of the international trusteeship system and to maintain peace, order and good government. The Administering Authority shall in particular be free, with the consent of the territorial representative Assembly:

1. To organize essential public services and works on such terms and such conditions as it thinks just.
2. To create monopolies of a purely fiscal character in the interest of the Territory and in order to provide the Territory with the fiscal resources which seem best suited to local requirements.
3. To establish or to permit to be established under conditions of proper public control, in conformity with Article 76, paragraph (d) of the Charter, such public enterprises or joint undertakings as appear to the Administering Authority to be in the interest of the economic advancement of the inhabitants of the Territory.

ARTICLE 10. The Administering Authority shall ensure in the Territory complete freedom of thought and the free exercise of all forms of worship and of religious teaching which are consistent with public order and morality. Missionaries who are nationals of States Members of the United Nations shall be free to enter the Territory and to reside therein, to acquire and possess property, to erect religious buildings and to open schools and hospitals throughout the Territory.

⁵ In the October 22 draft (A/155) subparagraph 3 of this article read: "(3) to establish or to authorize under conditions of proper public control, such other monopolies or undertakings having in them an element of monopoly, as appear to the Administering Authority to be in the interest of the economic advancement of the inhabitants of the territory."

The provisions of this Article shall not, however, affect the right and duty of the Administering Authority to exercise such control as may be necessary for the maintenance of public order and morality, and for the educational advancement of the inhabitants of the Territory.

The Administering Authority shall continue to develop elementary, secondary and technical education for the benefit of both children and adults. To the full extent compatible with the interests of the population it shall afford to qualified students the opportunity of receiving higher general or professional education.

The Administering Authority shall guarantee to the inhabitants of the Territory freedom of speech, of the press, of assembly and of petition, subject only to the requirements of public order.

ARTICLE 11. Nothing in this Agreement shall affect the right of the Administering Authority to propose at any future date the designation of the whole or part of the Territory thus placed under its trusteeship as a strategic area in accordance with Articles 82 and 83 of the Charter.

ARTICLE 12.^a* The terms of the present Trusteeship Agreement shall not be altered or amended except as provided in Articles 79, 82, 83 and 85, as the case may be, of the Charter.

ARTICLE 13. If any dispute whatever should arise between the Administering Authority and another Member of the United Nations, relating to the interpretation or the application of the provisions of the present Trusteeship Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice provided for by Chapter XIV of the Charter of the United Nations.

ARTICLE 14. The Administering Authority may enter, on behalf of the Territory, any consultative regional commission, technical organ or voluntary association of States which may be constituted. It may also collaborate, on behalf of the Territory, with international public or private institution or participate in any form of international co-operation in accordance with the spirit of the Charter.

ARTICLE 15. The present Agreement shall enter into force as soon as it has received the approval of the General Assembly of the United Nations.

^a The words "and 85" were added to this article during the discussions in the Assembly.

(4)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY
OF RUANDA-URUNDI¹

Approved by the General Assembly of the United Nations at the Sixty-Second Plenary Meeting of Its First Session on 13 December 1946

² * Whereas the territory known as Ruanda-Urundi has been administered in accordance with Article 22 of the Covenant of the League of Nations under a Mandate conferred upon Belgium;

Whereas Article 75 of the United Nations Charter signed at San Francisco on 26 June 1945 provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements;

Whereas under Article 77 of the said Charter the international trusteeship system may be applied to territories now held under mandate;

Whereas the Belgian Government has indicated its desire to place Ruanda-Urundi under the international trusteeship system; and

Whereas under Articles 75 and 77 of the Charter the placing of a territory under the international trusteeship system is to be effected by means of a trusteeship agreement;

Now, therefore, the General Assembly of the United Nations hereby resolves to approve the following terms of trusteeship for Ruanda-Urundi.

¹ This is the revised English translation as circulated in U.N. Document T/8, March 25, 1947 (pp. 45-51), which differs verbally from the translation in Document A/159/Rev. 2, December 12, 1946 (as corrected on March 20, 1947).

Points at which changes were made in this agreement during the discussions in the Assembly, are indicated by an *asterisk*. Such changes were made in the preamble of the Ruanda-Urundi text, and in Articles 6, 7, 10, 11, and 19. See author's footnotes to those articles.

² For the original preamble, see Document A/159, October 25, 1946. The second paragraph of the present text was followed in the October 25 draft by the following paragraphs:

"Whereas in virtue of the Mandate conferred upon Belgium over the said territory, the latter has been administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the provisions laid down in the Mandate, and whereas it is of importance, in the interests of the population of Ruanda-Urundi, to pursue the administrative and political development of the territory in question, in such a way as to promote the political, economic and social advancement of the inhabitants according to Article 76 of the Charter of the United Nations; and

Whereas the Belgian Government has indicated its desire to cause Ruanda-Urundi to be placed under the international trusteeship system; and

Whereas under Articles 75 and 77 of the Charter a territory may be placed under the trusteeship system by means of a trusteeship agreement; and

Whereas Articles 79, 83 and 85 provide that the terms of the trusteeship agreement shall be agreed upon by the States directly concerned and shall be approved by the United Nations,

The General Assembly, having noted that agreement between the States directly concerned, including the Mandatory Power, has been reached as required by Article 79 of the Charter, hereby decides, in accordance with Article 85, to approve the following terms of the trusteeship agreement in respect of Ruanda-Urundi.

ARTICLE 1. The present Trusteeship Agreement shall apply to the whole of the territory of Ruanda-Urundi as at present administered by Belgium and as defined by Article 1 of the Belgian Mandate and by the Treaty concluded in London on 22 November 1934 by Belgium and the United Kingdom.

ARTICLE 2. By the present Agreement, the Belgian Government is designated as Administering Authority for Ruanda-Urundi in accordance with Article 75 of the Charter. The said Government shall assume responsibility for the administration of the said Territory.

ARTICLE 3. The Administering Authority undertakes to administer Ruanda-Urundi in such a manner as to achieve the basic objectives of the international trusteeship system laid down in Article 76 of the United Nations Charter. The Administering Authority further undertakes to collaborate fully with the General Assembly of the United Nations and with the Trusteeship Council in the discharge of all their functions as defined in Article 87 of the United Nations Charter.

It likewise undertakes to facilitate such periodic visits to the Trust Territory as the General Assembly or the Trusteeship Council may decide to arrange, to decide jointly with these organs the dates on which such visits shall take place and also to agree jointly with them on all questions concerned with the organization and accomplishment of these visits.

ARTICLE 4. The Administering Authority shall ensure the maintenance of peace and order as well as the good government and defence of the Territory. The said Authority shall ensure that the Territory shall play its part in the maintenance of international peace and security.

ARTICLE 5. For the above-mentioned purposes, and in order to fulfil the obligations arising under the Charter and the present Agreement, the Administering Authority:

1. Shall have full powers of legislation, administration and jurisdiction in the territory of Ruanda-Urundi and shall administer it in accordance with Belgian law as an integral part of Belgian territory, subject to the provisions of the Charter and of this Agreement.
2. Shall be entitled to constitute Ruanda-Urundi into a customs, fiscal or administrative union or federation with adjacent territories under its sovereignty and to establish common services between such territories and Ruanda-Urundi, provided that such measures are not inconsistent with the objectives of the international trusteeship system and with the provisions of this Agreement.
3. May establish on the Trust Territory military bases, including air bases, erect fortifications, station its own armed forces and raise volunteer contingents therein.

The Administering Authority may likewise, within the limits laid down by the Charter, take all measures of organization and defence appropriate for ensuring:

The participation of the Territory in the maintenance of international peace and security.

The respect for obligations concerning the assistance and facilities to be given by the Administering Authority to the Security Council.

The respect for internal law and order.

The defence of the Territory within the framework of special agreements for the maintenance of international peace and security.

ARTICLE 6.³* The Administering Authority shall promote the development of free political institutions suited to Ruanda-Urundi. To this end the Administering Authority shall ensure to the inhabitants of Ruanda-Urundi an increasing share in the administration and services, both central and local, of the Territory; it shall further such participation of the inhabitants in the representative organs of the population as may be appropriate to the particular conditions of the Territory.

In short, the Administering Authority shall take all measures conducive to the political advancement of the population of Ruanda-Urundi in accordance with Article 76 (b) of the Charter of the United Nations.

ARTICLE 7.⁴* The Administering Authority undertakes to apply to Ruanda-Urundi the provisions of all present or future international conventions which may be appropriate to the particular conditions of the Territory and which would be conducive to the achievement of the basic objectives of the international trusteeship system.

ARTICLE 8. In framing laws relating to the ownership of land and the rights over natural resources, and to their transfer, the Administering Authority shall take into consideration native laws and customs and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or native-owned natural resources may be transferred, except between natives, save with the previous consent of the competent public authority. No real rights over native land or native-owned resources of the sub-soil, in favour of non-natives, may be created except with the same consent.

ARTICLE 9. Subject to the provisions of the following article, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all States Members of the United Nations and their nationals and to this end:

1. Shall ensure to all nationals of Members of the United Nations the same rights as are enjoyed by its own nationals in respect of entry into and residence in Ruanda-Urundi, freedom of transit and navigation, including freedom of transit and navigation by air, the acquisition of property, both movable and immovable, the protection of person and property, and the exercise of professions and trades.

* The original October 25 draft (A/159) of Article 6 did not contain the word "free" in the first sentence; it had the word "native" before "population"; and the words "towards self-government" after Ruanda-Urundi in the second paragraph.

* The December 12 draft of this article contained the words "and recommendations" following the word "conventions."

2. Shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of natural resources of the Territory and shall not grant concessions having the character of a general monopoly.
3. Shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.

The rights conferred by this article on the nationals of States Members of the United Nations apply equally to companies or associations controlled by such nationals and formed in accordance with the law of any Member of the United Nations.

ARTICLE 10.⁵ * Measures taken to give effect to the provisions of the preceding article shall be subject always to the overriding duty of the United Nations and of the Administering Authority to promote the political, economic, social and cultural advancement of the inhabitants of the Territory, and to pursue the other objectives of the trusteeship system as laid down in Article 76 of the Charter of the United Nations.

The Administering Authority shall, in particular, be free:

1. To organize essential public services and works on such terms and such conditions as it thinks just;
2. To create, in the interests of Ruanda-Urundi, monopolies of a purely fiscal character in order to provide the Territory with the resources which seem best suited to local requirements;
3. Where the interests or the economic advancement of the inhabitants of the Territory may require it, to establish or permit to be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control provided that, in the selection of agencies to carry out the purposes of this paragraph, other than agencies controlled by the Government or those in which the Government participates, the Administering Authority shall not discriminate on grounds of nationality against Members of the United Nations or their nationals.

ARTICLE 11.⁶ * Nothing in this Agreement shall entitle any Member of the United Nations to claim for itself or for its nationals, companies or associations the benefits of Article 9 of this Agreement in any respect in which it does not give to the inhabitants, companies and associations of

⁵ The word "always" in the first paragraph of this article was added during the Assembly discussions.

The original October 25 draft of Article 10, subparagraph 3, read as follows: "3. to create under its supervision such other monopolies or undertakings having in them an element of monopoly, provided always that: (i) they serve to promote the economic advancement of the inhabitants of the territory; (ii) that there shall result therefrom no preferential advantage inconsistent with the economic, commercial and industrial equality guaranteed in the preceding Article."

⁶ The original October 25 draft of Article 11 read as follows: "No provision of this Agreement shall entitle any Member of the United Nations to claim for itself or for its nationals, companies, or associations, the application of more favourable treatment than that granted by such Member in its own territory to Ruanda-Urundi and its inhabitants."

Ruanda-Urundi equality of treatment with the nationals, companies and associations of the state which it treats most favourably.

ARTICLE 12. The Administering Authority shall develop the system of elementary education in the Trust Territory in order to reduce the number of illiterates, to train the inhabitants in manual skill, and to improve the education of the population. The Administering Authority shall, so far as possible, provide the necessary facilities to enable qualified students to receive higher education, more especially professional education.

ARTICLE 13. The Administering Authority shall ensure throughout the Trust Territory complete freedom of conscience, freedom of religious teaching and the free exercise of all forms of worship which are consistent with public order and morality; all missionaries who are nationals of any State Member of the United Nations shall be free to enter, travel and reside in the Trust Territory, to acquire and possess property, to erect religious buildings and to open schools and hospitals therein. The provisions of the present article shall not, however, affect the duty of the Administering Authority to exercise such control as may be necessary for the maintenance of public order and good government and also the quality and progress of education.

ARTICLE 14. Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of the Trust Territory freedom of speech, of the press, of assembly, and of petition.

ARTICLE 15. The Administering Authority may, on behalf of the Trust Territory, accept membership in any advisory regional commission (regional authority), technical organization, or other voluntary association of States. It may co-operate with specialized agencies, whether public or private, and participate in other forms of international co-operation not inconsistent with the Charter.

ARTICLE 16. The Administering Authority shall make to the General Assembly of the United Nations an annual report on the basis of the questionnaire drawn up by the Trusteeship Council in accordance with Article 88 of the Charter of the United Nations.

Such reports shall include information regarding the measures taken in order to give effect to the suggestions and recommendations of the General Assembly and of the Trusteeship Council.

The Administering Authority shall appoint an accredited representative to attend the meetings of the Trusteeship Council at which the reports of the Administering Authority for Ruanda-Urundi will be examined.

ARTICLE 17. Nothing in this Agreement shall affect the right of the Administering Authority to propose at any future date the designation of the whole or part of the Territory as a strategic area in accordance with Articles 82 and 83 of the Charter.

ARTICLE 18. The terms of the present Trusteeship Agreement may not be altered or amended except as provided in Articles 79, 83 or 85 of the Charter.

ARTICLE 19.¹ * If any dispute whatever should arise between the Administering Authority and another Member of the United Nations relating to the interpretation or the application of the provisions of the present Trusteeship Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice provided for by Chapter XIV of the Charter of the United Nations.

(5)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF
WESTERN SAMOA²

Approved by the General Assembly [of the United Nations] at the Sixty-Second Plenary Meeting of Its First Session on 13 December 1946

Whereas the territory of Western Samoa has been administered in accordance with Article 22 of the Covenant of the League of Nations and pursuant to a mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of New Zealand;

And whereas the Charter of the United Nations signed at San Francisco on 26 June 1945, provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be the subject of trusteeship agreements;

And whereas under the said Charter the international trusteeship system may be applied to territories now held under mandate;

And whereas the Government of New Zealand have indicated their willingness that the said international trusteeship system be applied to Western Samoa;

And whereas the said Charter provides further that the terms of trusteeship are to be³ * approved by the United Nations;

¹ The original October 25 draft of Article 19 did not contain the words "or other means."

² U.N. Document T/8, March 25, 1947, pp. 52-57.

Points at which changes were made in the text of the agreement during the discussions in the Assembly are indicated by an *asterisk*. Such changes were made in the preamble and in Articles 3, 5, 6, and 14 of the Western Samoa draft. See author's footnotes to the text.

³ The following words in the original October 28 draft (U.N. Document A/160) were omitted in the final text at this point: "agreed upon by the states directly concerned, including the mandatory power, and."

Now, therefore, the General Assembly of the United Nations,³ * hereby resolves to approve the following terms of trusteeship for Western Samoa, in substitution for the terms of the aforesaid mandate.

ARTICLE 1. The Territory to which this Agreement applies is the territory known as Western Samoa comprising the islands of Upolu, Savai'i, Manono, and Apolima, together with all other islands and rocks adjacent thereto.

ARTICLE 2. The Government of New Zealand are hereby designated as the Administering Authority for Western Samoa.

ARTICLE 3.⁴ * The Administering Authority shall have full powers of administration, legislation and jurisdiction over the territory, subject to the provisions of this Agreement, and of the Charter of the United Nations, and may apply to the Territory, subject to any modifications which the Administering Authority may consider desirable, such of the laws of New Zealand as may seem appropriate to local conditions and requirements.

ARTICLE 4. The Administering Authority undertakes to administer Western Samoa in such a manner as to achieve in that Territory the basic objectives of the international trusteeship system, as expressed in Article 76 of the Charter of the United Nations, namely:

- (a) to further international peace and security;
- (b) to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the inter-dependence of the peoples of the world; and
- (d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

ARTICLE 5.⁵ * The Administering Authority shall promote the development of free political institutions suited to Western Samoa. To this end and as may be appropriate to the particular circumstances of the Territory

³ The following words in the October 28 draft were omitted in the final text at this point: "in accordance with the terms of the said Charter, having satisfied itself that the provisions of Article 79 of the Charter have been complied with."

⁴ In the October 28 draft the word "agreement" was followed by the words "as an integral part of New Zealand." This was dropped during the discussions in the Assembly and the words "and of the Charter of the United Nations" inserted.

⁵ The word "free" in the first sentence of this article was added during the discussions in the Assembly.

and its peoples, the Administering Authority shall assure to the inhabitants of Western Samoa a progressively increasing share in the administrative and other services of the Territory, shall develop the participation of the inhabitants of Western Samoa in advisory and legislative bodies and in the government of the Territory, and shall take all other appropriate measures with a view to the political advancement of the inhabitants of Western Samoa in accordance with Article 76 (b) of the Charter of the United Nations.

ARTICLE 6.^a* In pursuance of its undertakings to promote the social advancement of the inhabitants of the Trust Territory, and without in any way limiting its obligations thereunder, the Administering Authority shall:

1. Prohibit all forms of slavery and slave-trading;
2. Prohibit all forms of forced or compulsory labour, except for essential public works and services as specifically authorized by the local administration and then only in times of public emergency, with adequate remuneration and adequate protection of the welfare of the workers;
3. Control the traffic in arms and ammunition;
4. Control, in the interest of the inhabitants, the manufacture, importation and distribution of intoxicating spirits and beverages; and
5. Control the production, importation, manufacture, and distribution of opium and narcotic drugs.

ARTICLE 7. The Administering Authority undertakes to apply in Western Samoa the provisions of any international conventions and recommendations as drawn up by the United Nations or its specialized agencies which are, in the opinion of the Administering Authority, appropriate to the needs and conditions of the Trust Territory, and conducive to the achievement of the basic objectives of the international trusteeship system.

ARTICLE 8. In framing the laws to be applied in Western Samoa, the Administering Authority shall take into consideration Samoan customs and usages and shall respect the rights and safeguard the interests both present and future of the Samoan population.

In particular, the laws relating to the holding or transfer of land shall ensure that no native land may be transferred save with the prior consent of the competent public authority and that no right over native land in favour of any person not a Samoan may be created except with the same consent.

ARTICLE 9. The Administering Authority shall ensure in the Territory freedom of conscience and the free exercise of all forms of worship, and shall allow missionaries, nationals of any State Member of the United Nations, to enter into, travel and reside in the Territory for the purpose of prosecuting their calling. The provisions of this Article shall not, however, affect the right and duty of the Administering Authority to exercise such

* Subparagraph 5 of Article 6 was added during the discussions in the Assembly.

control as it may consider necessary for the maintenance of peace, order and good government.

ARTICLE 10. The Administering Authority shall ensure that the Trust Territory of Western Samoa shall play its part, in accordance with the Charter of the United Nations, in the maintenance of international peace and security. To this end the Administering Authority shall be entitled:

1. To establish naval, military and air bases and to erect fortifications in the Trust Territory.
2. To station and employ armed forces in the Territory.
3. To make use of volunteer forces, facilities and assistance from the Trust Territory in carrying out the obligations toward the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within the Trust Territory.
4. To take all such other measures in accordance with the Purposes and Principles of the Charter of the United Nations as are in the opinion of the Administering Authority necessary to the maintenance of international peace and security and the defence of Western Samoa.

ARTICLE 11. The Administering Authority shall as may be appropriate to the circumstances of the Trust Territory, continue and extend a general system of education, including post-primary education and professional training.

ARTICLE 12. Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of the Trust Territory, freedom of speech, of the press, of assembly and of petition.

ARTICLE 13. The Administering Authority may arrange for the co-operation of Western Samoa in any regional advisory commission, regional technical organization or other voluntary association of states, any specialized international bodies, public or private, or other forms of international activity not inconsistent with the Charter of the United Nations.

ARTICLE 14.⁷* The Administering Authority shall make to the General Assembly of the United Nations an annual report on the basis of a questionnaire drawn up by the Trusteeship Council in accordance with the Charter of the United Nations and shall otherwise collaborate fully with the Trusteeship Council in the discharge of all the Council's functions in accordance with Articles 87 and 88 of the Charter. The Administering Authority shall arrange to be represented at the sessions of the Trusteeship Council at which the reports of the Administering Authority with regard to Western Samoa are considered.

ARTICLE 15. The terms of this Agreement shall not be altered or amended except as provided in Article 79 of the Charter of the United Nations.

⁷ The phrase "in accordance with Articles 87 and 88 of the Charter," in the first sentence of this article, was added during the Assembly discussions.

ARTICLE 16. If any dispute should arise between the Administering Authority and another Member of the United Nations, relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or similar means, shall be submitted to the International Court of Justice.

(6)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY
OF NEW GUINEA¹

Approved by the General Assembly of the United Nations at the Sixty-Second Plenary Meeting of Its First Session on 13 December 1946

The Territory of New Guinea has been administered in accordance with Article 22 of the Covenant of the League of Nations and in pursuance of a mandate conferred upon His Britannic Majesty and exercised on His behalf by the Government of the Commonwealth of Australia.

The Charter of the United Nations, signed at San Francisco on 26 June 1945, provides by Article 75 for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements.

The Government of Australia now undertakes to place the Territory of New Guinea under the trusteeship system, on the terms set forth in the present Trusteeship Agreement.

Therefore the General Assembly of the United Nations, acting in pursuance of Article 85 of the Charter, approves the following terms of trusteeship for the Territory of New Guinea, in substitution for the terms of the Mandate under which the Territory has been administered.

ARTICLE 1. The Territory to which this Trusteeship Agreement applies (hereinafter called the Territory) consists of that portion of the island of New Guinea and the groups of islands administered therewith under the Mandate dated 17 December 1920, conferred upon His Britannic Majesty and exercised by the Government of Australia.

ARTICLE 2. The Government of Australia (hereinafter called the Administering Authority) is hereby designated as the sole authority which will exercise the administration of the Territory.

¹ U.N. Document T/8, March 25, 1947, pp. 26-28.

The point at which changes were made in the text of the present agreement during the discussions in the Assembly, is indicated by an *asterisk*, the only change being the addition of Article 8.

ARTICLE 3. The Administering Authority undertakes to administer the Territory in accordance with the provisions of the Charter and in such a manner as to achieve in the Territory the basic objectives of the international trusteeship system, which are set forth in Article 76 of the Charter.

ARTICLE 4. The Administering Authority will be responsible for the peace, order, good government and defence of the Territory and for this purpose will have the same powers of legislation, administration and jurisdiction in and over the Territory as if it were an integral part of Australia, and will be entitled to apply to the Territory, subject to such modifications as it deems desirable, such laws of the Commonwealth of Australia as it deems appropriate to the needs and conditions of the Territory.

ARTICLE 5. It is agreed that the Administering Authority, in the exercise of its powers under Article 4, will be at liberty to bring the Territory into a customs, fiscal or administrative union or federation with other dependent territories under its jurisdiction or control, and to establish common services between the Territory and any or all of these territories, if in its opinion it would be in the interests of the Territory and not inconsistent with the basic objectives of the trusteeship system to do so.

ARTICLE 6. The Administering Authority further undertakes to apply in the Territory the provisions of such international agreements and such recommendations of the specialized agencies referred to in Article 57 of the Charter as are, in the opinion of the Administering Authority, suited to the needs and conditions of the Territory and conducive to the achievement of the basic objectives of the trusteeship system.

ARTICLE 7. The Administering Authority may take all measures in the Territory which it considers desirable to provide for the defence of the Territory and for maintenance of international peace and security.

ARTICLE 8.² * The Administering Authority undertakes that in the discharge of its obligations under Article 3 of this agreement:

1. It will co-operate with the Trusteeship Council in the discharge of all the Council's functions under Articles 87 and 88 of the Charter.

2. It will, in accordance with its established policy:

- (a) take into consideration the customs and usages of the inhabitants of New Guinea and respect the rights and safeguard the interests, both present and future, of the indigenous inhabitants of the Territory; and in particular ensure that no rights over native land in favour of any person not an indigenous inhabitant of New Guinea may be created or transferred except with the consent of the competent public authority;
- (b) promote, as may be appropriate to the circumstances of the Territory, the educational and cultural advancement of the inhabitants;
- (c) assure to the inhabitants of the Territory, as may be appropriate to the particular circumstances of the Territory and its peoples, a

² This article was added towards the end of the Assembly discussions.

- progressively increasing share in the administrative and other services of the Territory;
- (d) guarantee to the inhabitants of the Territory, subject only to the requirements of public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and worship and freedom of religious teaching.

(7)

TRUSTEESHIP AGREEMENT FOR THE TERRITORY
OF NAURU¹

*Approved by the Second General Assembly of the United Nations
on November 1, 1947*

In pursuance of a Mandate conferred upon His Britannic Majesty the Territory of Nauru has been administered in accordance with Article 22 of the Covenant of the League of Nations by the Government of Australia on the joint behalf of the Governments of Australia, New Zealand, and the United Kingdom of Great Britain and Northern Ireland.

The Charter of the United Nations, signed at San Francisco on 26 June 1945, provides by Article 75 for the establishment of an International Trusteeship System for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements.

His Majesty desires to place the Territory of Nauru under the Trusteeship System and the Governments of Australia, New Zealand and the United Kingdom undertake to administer it on the terms set forth in the present Trusteeship Agreement.

Therefore the General Assembly of the United Nations acting in pursuance of Article 85 of the Charter

Approves the following terms of Trusteeship for the Territory of Nauru in substitution for the terms of the Mandate under which the Territory has been administered.

ARTICLE 1. The Territory to which this Trusteeship Agreement applies (hereinafter called "the Territory") consists of the island of Nauru (Pleasant Island) situated approximately 167° Longitude East and approximately 0°25' Latitude South, being the Territory administered under the Mandate above referred to.

ARTICLE 2. The Governments of Australia, New Zealand and the United Kingdom (hereinafter called "the Administering Authority") are hereby

¹ U.N. Document A/402/Rev. 1, October 21, 1947.

designated as the joint authority which will exercise the administration of the Territory.

ARTICLE 3. The Administering Authority undertakes to administer the Territory in accordance with the provisions of the Charter and in such a manner as to achieve in the Territory the basic objectives of the International Trusteeship System, which are set forth in Article 76 of the Charter.

ARTICLE 4. The Administering Authority will be responsible for the peace, order, good government and defence of the Territory, and for this purpose, in pursuance of an agreement made by the Governments of Australia, New Zealand and the United Kingdom, the Government of Australia will on behalf of the Administering Authority and except and until otherwise agreed by the Governments of Australia, New Zealand and the United Kingdom continue to exercise full powers of legislation, administration, and jurisdiction in and over the Territory.

ARTICLE 5. The Administering Authority undertakes that in the discharge of its obligations under Article 3 of this Agreement:

1. it will co-operate with the Trusteeship Council in the discharge of all the Council's functions under Articles 87 and 88 of the Charter;

2. it will, in accordance with its established policy:

- (a) take into consideration the customs and usages of the inhabitants of Nauru and respect the rights and safeguard the interests both present and future of the indigenous inhabitants of the Territory; and in particular ensure that no rights over native land in favour of any person not an indigenous inhabitant of Nauru may be created or transferred except with the consent of the competent public authority;
- (b) promote, as may be appropriate to the circumstances of the Territory, the economic, social, educational and cultural advancement of the inhabitants;
- (c) assure to the inhabitants of the Territory, as may be appropriate to the particular circumstances of the Territory and its peoples a progressively increasing share in the administrative and other services of the Territory and take all appropriate measures with a view to the political advancement of the inhabitants in accordance with Article 76 (b) of the Charter;
- (d) guarantee to the inhabitants of the Territory, subject only to the requirements of public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and worship and freedom of religious teaching.

ARTICLE 6. The Administering Authority further undertakes to apply in the Territory the provisions of such international agreements and such recommendations of the specialized agencies referred to in Article 57 of the Charter as are, in the opinion of the Administering Authority, suited to the

needs and conditions of the Territory and conducive to the achievement of the basic objectives of the Trusteeship System.

ARTICLE 7. In order to discharge its duties under Article 84 of the Charter and Article 4 of the present agreement, the Administering Authority may take all measures in the Territory which it considers desirable to provide for the defence of the Territory and for the maintenance of international peace and security.

ANNEX XIV

TRUSTEESHIP AGREEMENT FOR THE FORMER JAPANESE MANDATED ISLANDS¹

*Approved at the One Hundred and Twenty-Fourth Meeting of the
Security Council on April 2, 1947*

PREAMBLE

Whereas Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

Whereas under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and

Whereas on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

Whereas Japan, as a result of the Second World War, has ceased to exercise any authority in these islands;

Now, therefore, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan.

ARTICLE 1. The Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, is hereby designated as a strategic area and placed under the trusteeship system established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the trust territory.

ARTICLE 2. The United States of America is designated as the administering authority of the trust territory.

¹ U.N. Document S/318, April 2, 1947. Also in U. S. Department of State, *Bulletin*, May 4, 1947, pp. 791 ff.

Points at which changes were made in the present agreement during the discussions in the Security Council are indicated by an *asterisk*. Such changes were made in Articles 3, 6, and 7. See author's footnotes to the text.

ARTICLE 3.²* The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

ARTICLE 4. The administering authority, in discharging the obligations of trusteeship in the trust territory, shall act in accordance with the Charter of the United Nations, and the provisions of this agreement, and shall, as specified in Article 83 (2) of the Charter, apply the objectives of the international trusteeship system, as set forth in Article 76 of the Charter, to the people of the trust territory.

ARTICLE 5. In discharging its obligations under Article 76 (a) and Article 84, of the Charter, the administering authority shall ensure that the trust territory shall play its part, in accordance with the Charter of the United Nations, in the maintenance of international peace and security. To this end the administering authority shall be entitled:

1. to establish naval, military and air bases and to erect fortifications in the trust territory;
2. to station and employ armed forces in the territory; and
3. to make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for the local defense and the maintenance of law and order within the trust territory.

ARTICLE 6.³* In discharging its obligations under Article 76 (b) of the Charter, the administering authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends;
2. promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; en-

² In the original draft of this article (Document S/281, February 17, 1947) the word "agreement" was followed by the phrase "as an integral part of the United States."

³ The phrase "or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned" was added to this article (paragraph 1) during the discussions in the Security Council; and the word "local" was dropped from the original phrase "participation in local government."

- courage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communication;
3. promote the social advancement of the inhabitants and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs, and alcohol and other spirituous beverages; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and
 4. promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

ARTICLE 7.^{4*} In discharging its obligations under Article 76 (c) of the Charter, the administering authority shall guarantee to the inhabitants of the trust territory freedom of conscience, and, subject only to the requirements of public order and security, freedom of speech, of the press, and of assembly; freedom of worship, and of religious teaching; and freedom of migration and movement.

ARTICLE 8.—1. In discharging its obligations under Article 76 (d) of the Charter, as defined by Article 83 (2) of the Charter, the administering authority, subject to the requirements of security, and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Member, treatment in the trust territory no less favourable than that accorded therein to nationals, companies and associations of any other United Nation except the administering authority.

2. The administering authority shall ensure equal treatment to the Members of the United Nations and their nationals in the administration of justice.

3. Nothing in this Article shall be so construed as to accord traffic rights to aircraft flying into and out of the trust territory. Such rights shall be subject to agreement between the administering authority and the state whose nationality such aircraft possesses.

4. The administering authority may negotiate and conclude commercial and other treaties and agreements with Members of the United Nations and

⁴ The order of wording in the original draft of this article was as follows: "In discharging its obligations under Article 76 (c) of the Charter, the administering authority, subject only to the requirements of public order and security, shall guarantee to the inhabitants of the trust territory freedom of speech, of the press and of assembly; freedom of conscience, of worship and of religious teaching; and freedom of migration and movement." The change in the order of the words was requested by the United States representative to avoid the implication that "freedom of conscience" was subject to any limitation.

other states, designed to attain for the inhabitants of the trust territory treatment by the Members of the United Nations and other states no less favourable than that granted by them to the nationals of other states. The Security Council may recommend, or invite other organs of the United Nations to consider and recommend, what rights the inhabitants of the trust territory should acquire in consideration of the rights obtained by Members of the United Nations in the trust territory.

ARTICLE 9. The administering authority shall be entitled to constitute the trust territory into a customs, fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such territories and the trust territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this agreement.

ARTICLE 10. The administering authority, acting under the provisions of Article 3 of this agreement, may accept membership in any regional advisory commission, regional authority, or technical organization, or other voluntary association of states, may co-operate with specialized international bodies, public or private, and may engage in other forms of international co-operation.

ARTICLE 11.—1. The administering authority shall take the necessary steps to provide the status of citizenship of the trust territory for the inhabitants of the trust territory.

2. The administering authority shall afford diplomatic and consular protection to inhabitants of the trust territory when outside the territorial limits of the trust territory or of the territory of the administering authority.

ARTICLE 12. The administering authority shall enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory.

ARTICLE 13. The provisions of Articles 87 and 88 of the Charter shall be applicable to the trust territory, provided that the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons.

ARTICLE 14. The administering authority undertakes to apply in the trust territory the provisions of any international conventions and recommendations which may be appropriate to the particular circumstances of the trust territory and which would be conducive to the achievement of the basic objectives of Article 6 of this agreement.

ARTICLE 15. The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.

ARTICLE 16. The present agreement shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process.

ANNEX XV

RULES OF PROCEDURE FOR THE TRUSTEESHIP COUNCIL¹

*As approved at the Twenty-Second Meeting of Its First Session,
23 April 1947*

I. SESSIONS

RULE 1. The Trusteeship Council shall meet in two regular sessions each year. The first of such sessions shall be convened during the latter half of June and the second shall be convened during the latter half of November.

RULE 2. Special sessions shall be held as and where occasion may require, by decision of the Trusteeship Council, or at the request of a majority of its members, or at the request of the General Assembly, or at the request of the Security Council acting in pursuance of the relevant provisions of the Charter.

RULE 3. A request for a special session may be made by any member of the Trusteeship Council and shall be addressed to the Secretary-General of the United Nations, who without delay shall communicate the request to the other members of the Trusteeship Council. On notification by the Secretary-General that the majority of the members have concurred, the President of the Trusteeship Council shall request the Secretary-General to call a special session.

RULE 4. The President of the Trusteeship Council shall notify the members of the Council of the date and place of the first meeting of each session through the Secretary-General. Such notification, as a rule, shall be given at least thirty days in advance of the date of the session. Notifications shall also be addressed to the Security Council, to the Economic and Social Council, to such Members of the United Nations as have proposed an item for the agenda, and to such of the specialized agencies as may attend and participate in the meetings of the Trusteeship Council under the terms of the agreements with the United Nations.

RULE 5. A request for an alteration of the date of a regular session may be made by any member of the Trusteeship Council or the Secretary-General and shall be dealt with by a procedure similar to that provided in Rule 3 for a request for a special session.

¹ U.N. Document T/1/Rev. 1, April 23, 1947.

RULE 6. Each session shall be held at the seat of the United Nations, unless in pursuance of a previous decision of the Trusteeship Council or at the request of a majority of its members another place is designated. A request for a place of meeting other than the seat of the United Nations may be made by any member of the Trusteeship Council or by the Secretary-General and shall be dealt with by a procedure similar to that provided in Rule 3 for a request for a special session.

RULE 7. The Trusteeship Council may decide at any session to adjourn temporarily and resume its meetings at a later date.

II. AGENDA

RULE 8. The provisional agenda for each session of the Trusteeship Council shall be drawn up by the Secretary-General in consultation with the President and shall be communicated to the members and to the specialized agencies referred to in Rule 4 together with the notice summoning the Council.

RULE 9. The provisional agenda shall include consideration of:

- (a) such annual reports and other documents as may have been submitted by the Administering Authorities;
- (b) such petitions as may have been presented, a list of which shall be attached;
- (c) arrangements for and reports on visits to Trust Territories;
- (d) all items proposed by the Trusteeship Council at a previous session;
- (e) all items proposed by any Member of the United Nations;
- (f) all items proposed by the General Assembly, the Security Council, the Economic and Social Council, or a specialized agency under the terms of its agreement with the United Nations; and
- (g) all items or reports which the President or the Secretary-General may deem necessary to put before the Trusteeship Council.

RULE 10. The first item on the provisional agenda of any meeting of the Trusteeship Council shall be the adoption of the agenda. The Trusteeship Council may revise the agenda and may, as appropriate, add, defer or delete items. During any special session priority shall be given to the consideration of those items for which the session has been called.

III. REPRESENTATION AND CREDENTIALS

RULE 11. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

RULE 12. Members of the United Nations which are not members of the Trusteeship Council but which have proposed items on the agenda of that Council shall be invited to have present at the appropriate meetings of the

Council, representatives who shall be entitled to participate, without vote, in the deliberations on those items.

RULE 13. Representatives of specialized agencies shall be invited to attend meetings of the Trusteeship Council and to participate, without vote, in its deliberations in the circumstances indicated in the respective agreements between the United Nations and the specialized agencies.

RULE 14.—1. The credentials of representatives on the Trusteeship Council shall normally be communicated to the Secretary-General not less than twenty-four hours before the meeting at which the representatives will take their seats. The credentials shall be issued either by the Head of the State or by the Minister of Foreign Affairs of the respective member Governments.

2. The credentials shall be examined by the Secretary-General who shall submit a report thereon to the Trusteeship Council for approval.

RULE 15.—1. Any Member of the United Nations not a member of the Trusteeship Council, when invited to participate in a meeting or meetings of the Council, shall submit credentials for the representative appointed by it for this purpose in the same manner as provided in Rule 14. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is to attend.

2. The credentials of representatives referred to in the paragraph immediately preceding and of any representatives appointed in accordance with Rule 74 shall be examined by the Secretary-General who shall submit a report to the Trusteeship Council for approval.

RULE 16. The credentials of representatives of specialized agencies which have been invited to attend meetings of the Trusteeship Council in pursuance of Rule 13 shall be issued by the competent officer of each such specialized agency and shall be subject to the same procedure as defined in Rule 14.

RULE 17. Pending the decision on the credentials of a representative on the Trusteeship Council, such representative shall be seated provisionally and shall enjoy the same rights as he would have if his credentials were found to be in good order.

RULE 18. Each representative on the Trusteeship Council may be accompanied by such alternates and advisors as he may require. An alternate or an advisor may act as a representative when so designated by the representative.

IV. PRESIDENT AND VICE-PRESIDENT

RULE 19. The Trusteeship Council, by secret and separate ballots, shall elect, at the beginning of its regular session in June, a President and a Vice-President from among the representatives of the members of the Trusteeship Council.

RULE 20. The President and Vice-President shall hold office until their respective successors are elected, and shall not be eligible for immediate re-election.

RULE 21. In the absence of the President, the Vice-President shall act as President. In the event that the President for any reason is no longer able to act in that capacity, the Vice-President shall serve as President during the unexpired term. In both cases the Vice-President shall have the same powers and duties as the President.

RULE 22. The President may appoint one of his alternates or advisors to participate in the proceedings and to vote in the Trusteeship Council. In such a case the President shall not exercise his right to vote.

V. SECRETARIAT

RULE 23. The Secretary-General shall act in that capacity at the meetings of the Trusteeship Council and of its committees, sub-committees and such subsidiary bodies as may be established by it. The Secretary-General may authorize a deputy to act in his place.

RULE 24. The Secretary-General shall transmit to the members of the Trusteeship Council all communications which may be addressed to the Council from Members and organs of the United Nations and from specialized agencies. The Secretary-General shall also call to the attention of the Council communications from other sources, except those which are manifestly inconsequential, if they relate to the activities of the Trusteeship Council.

RULE 25. The Secretary-General shall provide and direct the staff required by the Trusteeship Council and such committees, sub-committees and other subsidiary bodies as it may establish.

RULE 26. The Secretary-General, or his deputy acting on his behalf, may at any time, upon the invitation of the President or of the chairman of a committee or a subsidiary body of the Trusteeship Council, make oral or written statements concerning any question under consideration.

RULE 27. The Secretary-General shall be responsible for all the necessary arrangements for meetings and other activities of the Trusteeship Council, its committees, sub-committees and subsidiary bodies.

VI. LANGUAGES

RULE 28. Chinese, English, French, Russian and Spanish shall be the official languages. English and French shall be the working languages of the Trusteeship Council.

RULE 29. Speeches made in one of the working languages shall be interpreted into the other working language.

RULE 30. Speeches made in any of the other three official languages shall be interpreted into both working languages.

RULE 31. Any representative may speak in a language other than the official languages. In such case, he shall himself provide for interpretation into one of the working languages. Interpretation into the other working language by an interpreter of the Secretariat may be based on the interpretation given in the first working language.

RULE 32. Verbatim records of meetings of the Trusteeship Council shall be drawn up in the working languages. A translation of the whole or part of any verbatim record into any of the other official languages shall be furnished if requested by any representative in the Trusteeship Council.

RULE 33. The official records and the *Journal* of the Trusteeship Council shall be issued in the working languages.

RULE 34. All resolutions of the Trusteeship Council shall be made available in the official languages. Other documents originating with the Council shall be made available in any of the official languages at the request of representatives of members of the Council.

RULE 35. Documents of the Trusteeship Council shall, if the Trusteeship Council so decides, be published in any language other than the official languages.

VII. VOTING

RULE 36. Each member of the Trusteeship Council shall have one vote.

RULE 37. Decisions or recommendations of the Trusteeship Council shall be made by a majority of the members present and voting. Members who abstain in particular votes shall not in those instances be counted as voting.

RULE 38. If a vote other than for an election is equally divided, a second vote shall be taken at the next meeting or, by decision of the Trusteeship Council, following a brief recess. Unless at the second vote there is a majority in favour of the proposal, it shall be deemed to be lost.

RULE 39. The Trusteeship Council shall vote by show of hands except that, before a vote is taken, any representative of a member may request a roll-call, which shall then be taken in the English alphabetical order of the names of the members of the Trusteeship Council.

RULE 40. The vote of each member participating in any roll-call shall be inserted in the record.

RULE 41. All elections and all decisions relating to the tenure of office of an individual shall be taken by secret ballot.

RULE 42. When only one person or member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be confined to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

RULE 43. When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, the number of candidates being not more than twice as many as the places remaining to be filled.

VIII. PUBLICITY OF MEETINGS

RULE 44. The meetings of the Trusteeship Council and of all of its subsidiary bodies shall be held in public, unless the Council or subsidiary body concerned decides that circumstances require that meetings be held in private.

RULE 45. At the close of private meetings, as may be appropriate, the Trusteeship Council shall issue a communiqué through the Secretary-General.

IX. RECORDS

RULE 46. The verbatim records of all public and private meetings shall be prepared by the Secretariat. They shall be made available in so far as possible within twenty-four hours of the end of the meetings to the representatives who have participated in the meetings.

RULE 47. The representatives who have participated in the meetings shall, within two working days after the distribution of the verbatim records, inform the Secretary-General of any corrections they wish to have made. Corrections that have been requested shall be considered approved, unless the President is of the opinion that they are sufficiently important to be submitted to the Trusteeship Council for approval.

RULE 48. The verbatim records of public and private meetings in which no corrections have been requested or which have been corrected in accordance with Rule 47 shall be considered as the official records of the Trusteeship Council. The official records of public meetings shall be published by the Secretariat as promptly as possible and communicated to the Members of the United Nations and to the specialized agencies referred to in Rule 4.

RULE 49. The official records of private meetings shall be accessible only to the Members of the United Nations, except that the Trusteeship Council may make public the records of any private meeting at such time and under such conditions as it may decide. When such records relate to strategic areas the Administering Authority concerned may request the Trusteeship Council to confine their availability to the Trusteeship and Security Councils.

X. CONDUCT OF BUSINESS

RULE 50. At any meeting of the Trusteeship Council two-thirds of the members shall constitute a quorum.

RULE 51. In addition to exercising the powers which are conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each meeting, direct the discussions, ensure observance of the rules of procedure, accord the right to speak, put questions and announce decisions. Subject to the rules of procedure, he shall have complete control of the proceedings of any meeting. The President, acting under the authority of the Trusteeship Council, shall represent it as an organ of the United Nations.

RULE 52. Whenever the President of the Trusteeship Council deems that for the proper fulfilment of the responsibilities of the presidency he should not preside over the Trusteeship Council during the consideration of a question with which the member he represents is directly connected, and in particular when annual reports and petitions relating to a Trust Territory of which the member he represents is the Administering Authority, are under consideration, he shall indicate his decision to the Trusteeship Council. The presidency shall then devolve for the purpose of the consideration of that question upon the Vice-President.

RULE 53. No representative may address the Trusteeship Council without having previously obtained the permission of the President. The President shall call upon speakers in the order in which they signify their desire to speak. The chairman of a subsidiary body, or a rapporteur, or the Secretary-General, however, may be accorded precedence. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

RULE 54. During the discussion of any matter, a representative may rise to a point of order and the point of order shall be immediately decided by the President, in accordance with the rules of procedure.

RULE 55. A representative may appeal from any ruling of the President. The appeal shall be put to the vote without discussion.

RULE 56.—1. The following motions shall have precedence in the order named over all resolutions or other motions relative to the subject before the meeting:

- (a) to suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the meeting to a certain day or hour;
- (d) for the closure of the debate on any motion or draft resolution, including amendments thereto, or on any amendment or amendments to a motion or draft resolution;
- (e) to limit the time allowed to each speaker;

- (f) to refer any matter to a committee, to the Secretary-General or to a rapporteur;
- (g) to postpone discussion of the question to a certain day or indefinitely; or
- (h) to amend.

2. Any motion for the suspension or for the simple adjournment of a meeting shall be decided without debate.

3. A motion for closure of debate on a resolution or other motion shall not be considered by the Trusteeship Council until each representative shall have had the opportunity to speak on that resolution or other motion. Debate on a motion for closure of debate shall be limited to one speaker for each side.

RULE 57. Reports, resolutions and other substantive motions or amendments shall be introduced in writing and handed to the Secretary-General. The Secretary-General shall, to the extent possible, circulate copies to the representatives twenty-four hours in advance of the meeting at which they are to be considered. The Trusteeship Council may decide to postpone the consideration of resolutions and other substantive motions or amendments, the copies of which have not been circulated twenty-four hours in advance.

RULE 58. Resolutions and other motions or amendments proposed by representatives of members on the Trusteeship Council may be put to the vote without having been seconded.

RULE 59.—I. Resolutions, motions or amendments may be withdrawn by the representative who introduced them at any time prior to the vote.

2. In a case where a representative withdraws a resolution, motion or amendment prior to the vote, any other representative on the Trusteeship Council may require that it be put to the vote as his resolution, motion or amendment under the same conditions as if the original mover had not withdrawn it.

RULE 60. Parts of a report, resolution, other motion or amendment may be voted on separately at the request of a representative and subject to the will of the Trusteeship Council. The proposal shall then be voted on as a whole.

RULE 61. A proposal to add to or delete from or otherwise revise a part of a resolution or a motion shall be considered as an amendment. An amendment shall be voted on first and if it is adopted, the amended resolution or motion shall then be voted on.

RULE 62. If two or more amendments are moved to a resolution or another motion, the President shall first put to the vote the amendment furthest removed in substance from the resolution or motion and then the amendment next furthest removed, and so on, until all the amendments have been voted upon or an amendment has been approved which, in the opinion of the Trusteeship Council, makes voting on the remaining amendments unnecessary.

RULE 63. If two or more resolutions or other motions relating to an original proposal are introduced, the President shall first put to the vote the resolution or motion furthest removed in substance from the original proposal. If that resolution or motion is rejected, the President shall put to the vote the resolution or motion next furthest removed, and so on, until either all the resolutions or motions have been put to a vote or one or more of them has been adopted, which in the opinion of the Trusteeship Council makes voting on the remaining proposals unnecessary.

RULE 64. A statement of minority views may be appended to a report or recommendation of the Trusteeship Council at the request of any member.

RULE 65. No resolution involving expenditure from United Nations funds shall be approved by the Trusteeship Council unless the Trusteeship Council has before it a report from the Secretary-General on the financial implications of the proposal, together with an estimate of the costs involved in the specific proposal.

XI. COMMITTEES AND RAPORTEURS

RULE 66. The Trusteeship Council may set up such committees as it deems necessary, define their composition and their terms of reference, and refer to them any questions on the agenda for study and report. The committees may be authorized to sit while the Trusteeship Council is not in session.

RULE 67. The procedure set forth in Rules 28 to 31, 36 to 38, and 51 to 63 inclusive, shall apply to proceedings of committees of the Trusteeship Council. The committees may decide upon the form of the records and adopt such other rules of procedure as may be necessary.

XII. QUESTIONNAIRES

RULE 68. Upon the coming into effect of each Trusteeship agreement, the Trusteeship Council shall transmit to the Administering Authority concerned, through the Secretary-General, such questionnaire as it shall have formulated, in accordance with Article 88 of the Charter, on the political, economic, social and educational advancement of the inhabitants of the Trust Territory involved.

RULE 69. The Trusteeship Council may modify the questionnaires at its discretion.

RULE 70. When, in accordance with Article 91 of the Charter, the Trusteeship Council considers it appropriate to avail itself of the assistance of the Economic and Social Council or of any specialized agency in the preparation of questionnaires, the President of the Trusteeship Council shall transmit through the Secretary-General to the Economic and Social Council or to

the specialized agency concerned those sections of the questionnaires with regard to which its advice may be desired.

RULE 71.—1. The questionnaire shall be communicated to each Administering Authority at least six months before the expiration of the year covered by the first annual report, and shall remain in force, without specific renewal, from year to year.

2. Any subsequent modifications shall be communicated to the Administering Authority concerned at least six months before the date fixed for the presentation of the first annual report which is to be based on the modified questionnaire.

XIII. ANNUAL REPORTS OF ADMINISTERING AUTHORITIES

RULE 72.—1. The annual report of an Administering Authority prepared on the basis of the questionnaire formulated by the Trusteeship Council shall be submitted to the Secretary-General within four months from the termination of the year to which it refers.

2. Each report of an Administering Authority shall be considered by the Trusteeship Council at the first regular session following the expiration of six weeks from the receipt of the report by the Secretary-General.

3. The Secretary-General shall transmit these reports without delay to the members of the Trusteeship Council.

RULE 73. The Administering Authorities shall furnish to the Secretary-General four hundred copies of each report for a Trust Territory. Copies of each such report shall at the same time be sent directly by the Administering Authority to the members of the Trusteeship Council as a means of expediting the work of the Council.

XIV. EXAMINATION OF ANNUAL REPORTS

RULE 74. In the examination of all annual reports the Administering Authority concerned shall be entitled to designate and to have present a special representative who should be well informed on the territory involved.

RULE 75. The special representative of the Administering Authority may participate without vote in the examination and discussion of a report, except in a discussion directed to specific conclusions concerning it.

XV. PETITIONS

RULE 76. Petitions may be accepted and examined by the Trusteeship Council if they concern the affairs of one or more Trust Territories or the operation of the International Trusteeship System as laid down in the Charter, except that with respect to petitions relating to a strategic area the

functions of the Trusteeship Council shall be governed by Article 83 of the Charter and the terms of the relevant Trusteeship agreements.

RULE 77. Petitioners may be inhabitants of Trust Territories or other parties.

RULE 78. Petitions may be presented in writing in accordance with Rules 79 to 86, or orally in accordance with Rules 87 to 91.

RULE 79. A written petition may be in the form of a letter, telegram, memorandum or other document concerning the affairs of one or more Trust Territories or the operation of the International Trusteeship System as laid down in the Charter.

RULE 80. The Trusteeship Council may hear oral presentations in support or elaboration of a previously submitted written petition. Oral presentations shall be confined to the subject-matter of the petition as stated in writing by the petitioners. The Trusteeship Council, in exceptional cases, may also hear orally petitions which have not been previously submitted in writing, provided that the Trusteeship Council and the Administering Authority concerned have been previously informed with regard to their subject-matter.

RULE 81. Normally petitions shall be considered inadmissible if they are directed against judgments of competent courts of the Administering Authority or if they lay before the Council a dispute with which the courts have competence to deal. This rule shall not be interpreted so as to prevent consideration by the Trusteeship Council of petitions against legislation on the grounds of its incompatibility with the provisions of the Charter of the United Nations or of the Trusteeship agreement, irrespective of whether decisions on cases arising under such legislation have previously been given by the courts of the Administering Authority.

RULE 82. Written petitions may be addressed directly to the Secretary-General or may be transmitted to him through the Administering Authority.

RULE 83. Written petitions submitted to the Administering Authority for transmission shall be communicated promptly to the Secretary-General, with or without comments by the Administering Authority, at its discretion, or with an indication that such comments will follow in due course.

RULE 84. Representatives of the Trusteeship Council engaged in periodic visits to Trust Territories or on other official missions authorized by the Council, may accept written petitions, subject to such instructions as may have been received from the Trusteeship Council. Petitions of this kind shall be transmitted promptly to the Secretary-General for circulation to the members of the Council. A copy of each such petition shall be communicated to the competent local authority. Any observations which the visiting representatives may wish to make on the petitions, after consultation with the local representative of the Administering Authority, shall be submitted to the Trusteeship Council.

RULE 85. The Secretary-General shall circulate promptly to the members of the Trusteeship Council all written petitions received by him, except for petitions relating to a strategic area with respect to which the functions of the Trusteeship Council shall be governed by Article 83 of the Charter and the terms of the relevant Trusteeship agreement.

RULE 86.—1. Written petitions will normally be placed on the agenda of a regular session provided that they shall have been received by the Administering Authority concerned either directly or through the Secretary-General at least two months before the date of the next following regular session.

2. Any observations on petitions which the Administering Authority desires to have circulated to members of the Trusteeship Council should, wherever possible, be transmitted to the Secretary-General not less than fourteen days before the opening of the session at which such petitions will be considered.

3. The date of receipt of a petition shall be considered as being:

- (a) in respect of a petition which is presented through the Administering Authority, the date on which the petition is received by the competent local authority in the territory or the metropolitan Government of the Administering Authority, as the case may be, and
- (b) in respect of a petition not presented through the Administering Authority, the date on which the petition is received by the Administering Authority through the Secretary-General. The Administering Authority concerned shall immediately notify the Secretary-General of the date of receipt of all such petitions.

4. In cases where the Administering Authority may be prepared to consider a written petition at shorter notice than is prescribed by the foregoing rules, or where, in exceptional cases, as a matter of urgency, it may be so decided by the Trusteeship Council in consultation with the Administering Authority concerned, such written petition may be placed on the agenda of a regular session notwithstanding that it has been presented after the due date, or it may be placed on the agenda of a special session.

RULE 87. Requests to present petitions orally or to make oral presentations in support or elaboration of written petitions, in accordance with Rule 80, may be addressed directly to the Secretary-General or may be transmitted to him through the Administering Authority. In the latter case the Administering Authority concerned shall communicate such requests promptly to the Secretary-General.

RULE 88. The Secretary-General shall promptly notify the members of the Trusteeship Council of all requests for oral petitions or oral presentations received by him, except for petitions relating to a strategic area with respect to which the functions of the Trusteeship Council shall be governed by Article 83 of the Charter and the terms of the relevant Trusteeship agreement.

RULE 89. Representatives of the Trusteeship Council engaged in periodic visits to Trust Territories or on other official missions authorized by the Council may receive oral presentations or petitions, subject to such instructions as may have been received from the Trusteeship Council. Such oral presentations or petitions shall be recorded by the visiting mission, and the record shall be transmitted promptly to the Secretary-General for circulation to the members of the Council and to the Administering Authority for comment. A copy of each such record shall be communicated to the competent local authority. Any observations which the visiting representatives may wish to make on the oral presentations or petitions, after consultation with the local representative of the Administering Authority, shall be submitted to the Trusteeship Council.

RULE 90. The Trusteeship Council, at the beginning of each session which includes the consideration of petitions on its agenda, may appoint an *ad hoc* committee on petitions whose membership shall be evenly divided between representatives of members administering Trust Territories and representatives of members having no administering responsibilities. The *ad hoc* committee on petitions shall be empowered to undertake a preliminary examination of the petitions on the agenda. No appraisal of the substance of the petitions shall be made by the *ad hoc* committee.

RULE 91. The Trusteeship Council may designate one or more of its representatives to accept oral petitions the subject-matter of which has been previously communicated to the Trusteeship Council and to the Administering Authority concerned. Oral petitions and oral presentations may be examined either in public or in private, as may be determined, in accordance with Rule 44.

RULE 92. In the examination of all petitions the Administering Authority concerned shall be entitled to designate and to have present a special representative who should be well informed on the territory involved.

RULE 93. The Secretary-General shall inform the Administering Authorities and the petitioners concerned of the actions taken by the Trusteeship Council on each petition, and shall transmit to them the official records of the public meetings at which the petitions were examined.

XVI. VISITS TO TRUST TERRITORIES

RULE 94. The Trusteeship Council, in accordance with the provisions of Article 87 (c) and Article 83, paragraph 3, of the Charter, as the case may be, and with the terms of the respective Trusteeship agreements, shall make provision for periodic visits to each Trust Territory with a view to achieving the basic objectives of the International Trusteeship System.

RULE 95. The Trusteeship Council, acting in conformity with the terms of the respective Trusteeship agreements, shall define the terms of reference

of each visiting mission and shall issue to each mission such special instructions as it may consider appropriate.

RULE 96. The Trusteeship Council shall select the members of each visiting mission who shall preferably be one or more of the representatives on the Council. Each mission may be assisted by experts and by representatives of the local administration. A mission and the individual members thereof shall, while engaged in a visit, act only on the basis of the instructions of the Council and shall be responsible exclusively to it.

RULE 97. The Trusteeship Council may, in agreement with the Administering Authority, conduct special investigations or enquiries when it considers that conditions in a Trust Territory make such action desirable.

RULE 98. All expenses of periodic visits, special investigations and enquiries, including the travel expenses of the visiting missions, shall be borne by the United Nations.

RULE 99. Each visiting mission shall submit to the Trusteeship Council a report on its visit, a copy of which shall be promptly transmitted to the Administering Authority concerned by the Secretary-General. The report may be published by the Council in such form as it may deem appropriate. Observations on each such report by the Council and by the Administering Authority concerned may be similarly published.

XVII. REPORTS OF THE TRUSTEESHIP COUNCIL

RULE 100. The Trusteeship Council shall present annually to the General Assembly a general report on its activities and on the discharge of its responsibilities under the International Trusteeship System. Each such report shall include an annual review of the conditions in each Trust Territory.

RULE 101.—1. The sections of the general reports of the Trusteeship Council to the General Assembly relating to conditions in specific Trust Territories, referred to in Rule 100, shall take into account the annual reports of the Administering Authorities, and such other sources of information as may be available, including petitions, reports of visiting missions, and any special investigations or enquiries, as provided for in Rule 97.

2. The general reports shall include, as appropriate, the conclusions of the Trusteeship Council regarding the execution and interpretation of the provisions of Chapters XII and XIII of the Charter and of the Trusteeship agreements, and such suggestions and recommendations concerning each Trust Territory as the Council may decide.

RULE 102. The reports of the Trusteeship Council to the General Assembly provided for in Rules 100 and 101 shall be transmitted through the Secretary-General at least thirty days before the opening of the regular session of the General Assembly.

RULE 103. The Trusteeship Council may designate the President, the Vice-President or another of its members to represent it during the consideration of its reports by the General Assembly.

XVIII. OTHER FUNCTIONS

RULE 104. The Trusteeship Council shall perform such other functions as may be provided for in the Trusteeship agreements, and, in pursuance of the duty imposed upon it by Article 85 of the Charter, may submit to the General Assembly recommendations concerning the functions of the United Nations with regard to Trusteeship agreements, including the approval of the terms of the Trusteeship agreements and of their alteration or amendment. With regard to strategic areas, the Trusteeship Council may similarly perform such functions in so far as it may be requested to do so by the Security Council.

XIX. RELATIONSHIP WITH OTHER BODIES

RULE 105.—1. The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council, of the specialized agencies and of appropriate intergovernmental regional bodies which may be separately established, relating to matters with which they may be concerned.

2. The Secretary-General shall promptly communicate to these bodies the annual reports of the Administering Authorities and such reports and other documents of the Trusteeship Council as may be of special concern to them.

XX. SUSPENSION OF RULES

RULE 106. When the Trusteeship Council is in session, a rule of procedure may be suspended by decision of the Council.

XXI. AMENDMENT

RULE 107. These rules of procedure may be amended by the Trusteeship Council. Normally, a vote shall not be taken until four days after a proposal for amendment has been submitted.

ANNEX XVI

TREATY OF PEACE BETWEEN THE ALLIED AND ASSOCIATED POWERS AND ITALY

*Signed at Paris, February 10, 1947*¹

SECTION IV.—*Italian Colonies*

ARTICLE 23.—1. Italy renounces all right and title to the Italian territorial possessions in Africa, i.e. Libya, Eritrea and Italian Somaliland.

2. Pending their final disposal, the said possessions shall continue under their present administration.

3. The final disposal of these possessions shall be determined jointly by the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France within one year from the coming into force of the present Treaty, in the manner laid down in the joint declaration of February 10, 1947, issued by the said Governments, which is reproduced in Annex XI.

ANNEX XI

Joint Declaration by the Governments of the Soviet Union, of the United Kingdom, of the United States of America and of France concerning Italian Territorial Possessions in Africa

1. The Governments of the Union of Soviet Socialist Republics, of the United Kingdom of Great Britain and Northern Ireland, of the United States of America, and of France agree that they will, within one year from the coming into force of the Treaty of Peace with Italy bearing the date of February 10, 1947, jointly determine the final disposal of Italy's territorial possessions in Africa, to which, in accordance with Article 23 of the Treaty, Italy renounces all right and title.

2. The final disposal of the territories concerned and the appropriate adjustment of their boundaries shall be made by the Four Powers in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments.

¹ *Treaties of Peace with Italy, Bulgaria, Hungary, Roumania and Finland*, U. S. Department of State Publication 2743, European Series 21, pp. 13, 88.

3. If with respect to any of these territories the Four Powers are unable to agree upon their disposal within one year from the coming into force of the Treaty of Peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it.

4. The Deputies of the Foreign Ministers shall continue the consideration of the question of the disposal of the former Italian Colonies with a view to submitting to the Council of Foreign Ministers their recommendations on this matter. They shall also send out commissions of investigation to any of the former Italian Colonies in order to supply the Deputies with the necessary data on this question and to ascertain the views of the local population.

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¹ The present list is not a bibliography of the subject, but includes only works or articles cited in the text and footnotes. Some of the miscellaneous League and United Nations documents and publications used in the preparation of the study and cited in footnotes are omitted from the list. For lists of United Nations and mandate documents, see U. N. Document A/C.4/39, November 3, 1946 (*List of Official Documents relating to the Mandates System available in Division of Trusteeship of the Secretariat for Background and Reference Purposes in Connection with the Discussions in Committee IV of the General Assembly*); and Documents A/C.4/89, December 23, 1946; A/C.4/89/Corr. 1, January 6, 1947; A/C.4/90, March 31, 1947 (*Lists of Documents of the Fourth Committee and Its Subcommittees*).

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KEY TO MAP OF THE INTERNATIONAL FRONTIER

(See Chapter I and map on end papers.)

"The international frontier (i.e., the major zones of overlapping interests of the powers) is the main line of structural weakness in the earth's political crust." The map can give only a very rough pictorial impression of a long and complex history. It illustrates some of the characteristic phenomena of the international frontier. Those shown are some of the many international compromise arrangements made in the past hundred years or more at points on the frontier, such as neutralized and demilitarized areas; international territorial regimes of various kinds (mandates, trusteeships, condominiums, international "free cities," international protectorates, etc.); arrangements to protect trade, investment, and travel (such as capitulations, extraterritoriality, treaty ports, etc.). Numerous other phenomena of the frontier are not shown—such as many buffer states (including the Soviet girdle of satellite states in Eastern Europe), minority regimes, disputes before the League or the United Nations relating to particular areas. Conflicts of political and economic systems and ideologies are diffused over the globe and cannot be shown on a map. There are no numbers for the Western Hemisphere because it lacks any of the characteristic phenomena of the international frontier illustrated on the map.

1. Arctic (frontier zone after World War II).
2. Spitzbergen (demilitarized, open-door area, by Treaty of 1920).
3. Aaland Islands (neutralized and demilitarized, 1856, 1921).
4. Estonia, Latvia, and Lithuania (suggested as mandates by head of an American mission, 1919).
5. Free City of Danzig (League of Nations protectorate, 1919-39).
6. Upper Silesia (plebiscite area after World War I).
7. Eastern Galicia (draft Polish mandate, 1919).
8. Belgium and Luxemburg (neutralized in nineteenth and early twentieth century).
9. Rhineland (demilitarized under Versailles Treaty; proposed international regime in the Ruhr, 1948).
10. Saar Territory (demilitarized; League of Nations trusteeship, 1919-35).
11. Switzerland (neutralized).
12. Germany and Austria (under four-power occupation after World War II; demilitarized).
13. Adriatic:
 - Fiume area (mandates, etc., proposed 1919).
 - Free Territory of Trieste (United Nations Security Council as trustee, 1947; occupied by United States, United Kingdom, and Yugoslav forces).
 - Albania (international regime, protectorate, League mandate, independent state, 1912-20).
 - Demilitarized Islands and Zones: Ionian Islands (neutralized, 1864); Pelagos, Pianosa, etc. (demilitarized under Peace Treaties, 1919-20; and Italian Peace Treaty, 1947).

14. Pantelleria and Pelagian Islands (demilitarized under Italian Peace Treaty, 1947).
15. Greece (border attacks; American aid; United Nations Commission; 1947-48).
16. Dodecanese Islands—Greece (demilitarized under Italian Peace Treaty, 1947).
17. Balkans (international regimes in Bulgaria and Eastern Rumelia, 1877-78, etc., etc.; minority treaties).
18. Black Sea (neutralized from 1856 for fourteen years).
19. Straits (regulated by treaty from end of eighteenth century; international regime of the Straits under Lausanne and Montreux Conventions; perpetual American mandate over Constantinople and the Straits proposed in 1919).
20. International zone of Tangier (international municipal body, neutralized, from nineteenth century).
21. Morocco (police mandate to France and Spain, 1906).
22. Crete (international regime, with gendarmerie, under governor appointed by Concert of Europe, 1897 to World War I).
23. Anatolia (mandates proposed at Peace Conference, 1919, and by United States King-Crane Commission).
24. Alexandretta (League mandate; then an international regime, demilitarized; then again Turkish territory; 1920-39).
25. Syria and Lebanon (League of Nations mandate, 1920-44); Lebanon (mandate to France, under nominal protection of six European powers, with Christian governor, 1860).
26. Palestine, Trans-Jordan. (Palestine: League mandate, 1919 to May 15, 1948, United Nations Partition Plan with trusteeship for Jerusalem, 1948, United Kingdom—Trans-Jordan Treaty of 1946 ended mandate).
27. Iraq (League mandate, then sovereign state linked by treaty with Great Britain).
28. International regime of the Suez Canal (by treaty from 1888; demilitarized and neutralized).
29. Egypt (Anglo-French condominium, 1879-82; protectorate; independent state linked with Great Britain by Treaty of 1936).
30. Anglo-Egyptian Sudan (condominium from 1899).
31. Italian Colonies in Africa: Libya, Eritrea, Somaliland (projected United Nations trusteeships; claim of U.S.S.R. to one of the trust areas).
32. League of Nations Mandates and United Nations Trusteeships in Africa: Tanganyika, Ruanda-Urundi, Togoland (French and British), Cameroons (French and British), South-West Africa.
33. Conventional Basin of Congo, 1885 ff.
34. Iran (buffer state, Russian and British spheres of influence; United States assurance of aid).
35. Afghanistan, Sinkiang, Mongolia (buffer areas).
36. Manchuria (joint U.S.S.R. and Chinese control of two main railway lines under Yalta Agreements and Sino-Russian Treaty).
37. Dairen (Yalta Agreements: "Internationalized" port of Dairen; Russian base at Port Arthur).

38. Korea (projected four-power trusteeship; joint occupation, U.S.S.R. and United States; United Nations Commission).
39. Japan (under Allied occupation; Kuriles "handed over" to U.S.S.R. at Yalta)
40. China, Siam, etc. (treaty ports, international settlements, extra-territoriality, etc.)
41. United States strategic-area trusteeship: Marshall, Caroline, Marianne Islands (former League mandate held by Japan).
42. United States bases in Philippines under treaty (1946).
43. N. E. New Guinea (League mandate; United Nations trusteeship).
44. Nauru (League mandate; United Nations trusteeship).
45. New Hebrides (Anglo-French condominium from 1906).
46. Western Samoa (League mandate; United Nations trusteeship). Samoan Archipelago (tripartite condominium, United States—Germany—United Kingdom, from 1889 to 1899; neutralized).
47. Canton and Enderbury Islands (fifty years' condominium, United States—United Kingdom, from 1939).
48. Islands to which title is in dispute between United Kingdom (or New Zealand) and United States.
49. Antarctic (new zone of the international frontier).

